AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 88 Thursday,
No. 206 October 26, 2023

Pages 73527–73754

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–09512—1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 88, No. 206

Thursday, October 26, 2023

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 88, No. 206
Thursday, October 26, 2023

Presidential Documents

Title 3—

The President

Proclamation 10657 of October 23, 2023

United Nations Day, 2023

By the President of the United States of America

A Proclamation

Seventy-seven years ago, leaders from around the globe gathered for the first United Nations General Assembly. With the horrors of World War II weighing on their hearts and the hopes of humanity resting on their shoulders, they established institutions that are an enduring legacy of the progress we have made in creating a world where all people can live with dignity. This United Nations Day, we renew our commitment to sustaining and strengthening those institutions. As we commemorate the 75th anniversary of the adoption of the Universal Declaration of Human Rights, may we live up to its fundamental promise by continuing to advance the causes of freedom, justice, and peace in the world.

We are at an inflection point in world history. From Russia's brutal invasion of Ukraine and Hamas' brutal terrorist attack on Israel to the threat of climate change, we face enormous challenges to the systems our forebearers fought so hard to create. The decisions we make now will determine our course for generations to come. The United States has a duty to lead in this critical moment. We will continue to join together with international partners under a common vision for the future of the world. This means working together to accelerate progress toward the Sustainable Development Goals (SDGs)—17 goals adopted by all United Nations member states in 2015 as a call to action and clear roadmap for people and the planet. Through the SDGs, we can advance toward a future where extreme poverty does not exist, our children do not go hungry, everyone has access to quality health care, workers are empowered, our environment is protected, entrepreneurs and innovators can access opportunity, conflicts are resolved peacefully, and countries can chart their own course. We will also continue to strengthen the United Nations' ability to end conflicts, build peace, defend human dignity, and respond to the humanitarian impacts of war. No nation can meet these challenges alone, and my Administration recognizes the critical role the United Nations plays in bringing about that vision.

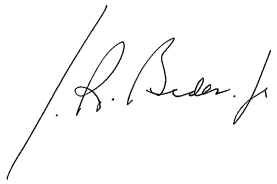
Our country stands ready to continue the charge toward making that vision a reality by seeking a more secure, prosperous, and equitable world for everyone. We are working across the board to make global institutions more responsive, more effective, and more inclusive. Working closely with our international partners, we are closing global infrastructure gaps, bolstering the bonds that unite our nations, and unlocking endless opportunities that represent hope and possibility for all people. Through our Partnership for Workers' Rights, we are partnering with other United Nations member states around the world to give workers the tools they need to exercise their rights, promote a safe and decent work environment, advance a worker-centered clean energy transition, harness technology, and confront and condemn workplace discrimination in all its ugly forms. Meanwhile, we will continue working with our international partners to tackle the climate crisis and any other challenges we are confronted with.

When we stand together and recognize the common hopes that bind all humanity, we hold in our hands the power to bend the arc of history. So often, the work of the United Nations has been a reminder of those

hopes, bringing us all closer together and pushing us to recognize one another as human beings worthy of dignity and respect. This United Nations Day, let us rededicate ourselves to supporting the United Nations in its mission to preserve peace, prevent conflict, and alleviate human suffering.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 24, 2023, as United Nations Day. I urge the Governors of the United States and its Territories, and the officials of all other areas under the flag of the United States, to observe United Nations Day with appropriate ceremonies and activities.

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



[FR Doc. 2023–23803
Filed 10–25–23; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 88, No. 206
Thursday, October 26, 2023

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2014–0225; Amdt. No. 91–331H]

RIN 2120–AL95

Removal of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action removes the current flight prohibition Special Federal Aviation Regulation (SFAR) for specified areas of the Dnipro Flight Information Region (FIR) (UKDV). This SFAR, which is scheduled to expire on October 27, 2023, reflects risks to the safety of U.S. civil aviation as they existed prior to the Russian Federation's full-scale invasion of Ukraine in February 2022 and is therefore obsolete. This action is necessary to alleviate confusion that might otherwise result from leaving an obsolete rule in the Code of Federal Regulations (CFR) after its scheduled expiration date of October 27, 2023. FAA Notice-to-Air-Missions (NOTAM) KICZ A0004/22 remains in effect and continues to prohibit U.S. civil flight operations in the Lviv (UKLV), Kyiv (UKBV), Dnipro (UKDV), Simferopol (UKFV), and Odesa (UKOV) FIRs, as well as the Kyiv Upper Information Region (UIR) (UKBU). NOTAM KICZ A0004/22, together with NOTAMs KICZ A0003/22 and A0005/22, reflects the FAA's current assessment of the safety-of-flight risks the Russia-Ukraine conflict presents to U.S. civil aviation operations.

DATES: This final rule is effective on October 27, 2023.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, through the Washington Operations Center, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3203; email *9-FAA-OverseasFlightProhibitions@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action removes the FAA's current flight prohibition SFAR for specified areas of the Dnipro FIR (UKDV), SFAR No. 113, 14 CFR 91.1607.[1] SFAR No. 113, § 91.1607, which is scheduled to expire on October 27, 2023, reflects risks to the safety of U.S. civil aviation as they existed prior to the Russian Federation's full-scale invasion of Ukraine in February 2022 and is therefore obsolete. This action is necessary to alleviate confusion that might otherwise result from leaving an obsolete rule in the CFR after its scheduled expiration date of October 27, 2023. NOTAM KICZ A0004/22 remains in effect and continues to prohibit U.S. civil flight operations in the Lviv (UKLV), Kyiv (UKBV), Dnipro (UKDV), Simferopol (UKFV), and Odesa (UKOV) FIRs, as well as the Kyiv UIR (UKBU). NOTAM KICZ A0004/22, together with NOTAMs KICZ A0003/22 and A0005/22,[2] reflects the FAA's current assessment of the safety-of-flight risks the Russia-Ukraine conflict presents to U.S. civil aviation operations.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it removes an obsolete flight prohibition that prohibits the persons described in paragraph (a) of SFAR No. 113, § 91.1607, from conducting flight operations in specified areas of the Dnipro FIR (UKDV) only. The February 2022 full-scale Russian invasion of Ukraine and the ensuing armed conflict between the Russian Federation and Ukraine significantly expanded the area of unacceptable safety-of-flight risks to U.S. civil aviation beyond the boundaries of SFAR No. 113, § 91.1607. To address the resulting emergency related to safety in air commerce, which required immediate action, the FAA Administrator issued emergency orders, as authorized by 49 U.S.C. 46105(c), in the form of NOTAMs KICZ A0003/22, A0004/22, and A0005/22. As described in NOTAMs KICZ A0003/22, A0004/22, and A0005/22, these emergency orders prohibit U.S. civil aviation operations throughout all of the FIRs managed by Belarus and Ukraine and in specified areas of certain FIRs managed by the Russian Federation. The FAA has determined it is not practicable at this time to give preference to a proceeding to incorporate the flight prohibition contained in NOTAM KICZ A0004/22 into the CFR, because the Russia-

[1] In its May 24, 2018, Aeronautical Information Regulation and Control (AIRAC 1806) publication, the Ukrainian State Air Traffic Services Enterprise, the air navigation service provider for Ukraine, renamed the FIR formerly known as the Dnipropetrovsk FIR (UKDV) the Dnipro FIR (UKDV). This rule uses the current FIR name, including in historical references to the FIR.

[2] NOTAM KICZ A0003/22 prohibits U.S. civil aviation operations in the Minsk FIR (UMMV), and NOTAM KICZ A0005/22 prohibits U.S. civil aviation operations in specified areas of the Moscow (UUWV), Samara (UWWW), and Rostov-na Donu (URRV) FIRs within the 160 nautical miles of the boundaries of those FIRs and the Ukrainian-managed FIRs described in NOTAM KICZ A0005/22.

Ukraine conflict and the associated areas of unacceptable safety-of-flight risks to U.S. civil aviation have yet to stabilize sufficiently.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be unnecessary.

This action removes SFAR No. 113, § 91.1607, which only prohibits U.S. civil aviation operations in specified areas of the Dnipro FIR (UKDV) and is scheduled to expire on October 27, 2023. As previously described, the February 2022 full-scale Russian invasion of Ukraine and the ensuing armed conflict between the Russian Federation and Ukraine significantly expanded the area of unacceptable safety-of-flight risks to U.S. civil aviation, leading the FAA to issue NOTAMs KICZ A0003/22, A0004/22, and A0005/22 to address the resulting emergency related to safety in air commerce. NOTAM KICZ A0004/22 prohibits U.S. civil aviation operations in all of the FIRs managed by Ukraine, including the specified areas of the Dnipro FIR (UKDV) in which SFAR No. 113, § 91.1607, prohibits U.S. civil aviation operations. NOTAM KICZ A0004/22 remains in effect until modified, superseded, or rescinded by the FAA.

Leaving SFAR No. 113, § 91.1607, in the CFR after its scheduled expiration date of October 27, 2023, might confuse the regulated community. Therefore, to alleviate the potential for confusion, the FAA is removing SFAR No. 113, § 91.1607. This action is ministerial in nature as it is only removing an expired provision from the CFR and has no substantive effect on the public.

For the reasons previously described, the FAA finds that providing notice and seeking public comment under 5 U.S.C. 553(b)(B) are unnecessary. For the same reasons, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background and Discussion of the Final Rule

On April 25, 2014, the FAA published SFAR No. 113, § 91.1607, which initially prohibited certain flight operations in a portion of the Simferopol FIR (UKFV) after Russia unlawfully seized Crimea from Ukraine.[3] In the months that followed, the ensuing violence and the associated safety-of-flight risks to U.S. civil aviation expanded to encompass the entirety of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). Tragically, Malaysia Airlines Flight 17 (MH 17) was shot down on July 17, 2014, while flying over Ukraine at 33,000 feet, just west of the Russian border. All of the 298 passengers and crew on board MH 17 perished.

The FAA determined the use of weapons capable of targeting and shooting down aircraft flying on civil air routes at cruising altitudes posed a dangerous threat to U.S. civil aviation operating in the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). On July 18, 2014, Coordinated Universal Time (UTC), the FAA issued NOTAM FDC 4/2182, which prohibited U.S. civil aviation operations in the entirety of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively). The FAA subsequently incorporated that flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014.[4]

In the years that followed, the FAA determined security and safety conditions had stabilized sufficiently in certain portions of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively) for U.S. civil aviation operations to resume safely.[5] Most recently, in an October 2021 final rule,[6] the FAA determined that an unacceptable level of inadvertent risk to U.S. civil aviation operations remained in the specified areas of the Dnipro FIR (UKDV), which included the airspace over and near the line of contact, as it existed at that time, where most cease-fire violations occurred. Tensions remained elevated, in part due to the heightened Russian military force posturing in Crimea and along the Russia-Ukraine border and increases in cease-fire violations. In addition, the conflict between Ukraine and Russian-back separatists in eastern Ukraine continued. These circumstances resulted in continued inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification.

The February 2022 full-scale Russian invasion of Ukraine greatly expanded the area of unacceptable safety-of-flight risks to U.S. civil aviation to include the entirety of Ukrainian territorial airspace, as well as the international airspace of all of the FIRs managed by Ukraine. On February 24, 2022, the FAA issued NOTAM KICZ A0004/22, prohibiting U.S. civil aviation operations in all of the FIRs managed by Ukraine at all altitudes.

The FAA has determined the situation in all of the FIRs managed by Ukraine continues to pose an unacceptable level of risk for U.S. civil aviation safety. Conflict-related risks affecting civil aviation in these FIRs include near-daily attacks using weaponized unmanned aircraft systems (UAS), cruise missiles, and attack helicopters, resulting in the increased defensive use of advanced surface-to-air missile systems and electronic warfare. The Russian Federation has demonstrated its continuing capability and intent to use standoff strike capabilities to engage targets throughout Ukraine, including the capital, Kyiv, and Lviv, located in western Ukraine near the border with Poland. In June 2023, Ukraine launched its anticipated counteroffensive in eastern and southern Ukraine, prompting increased Russian standoff attacks to put pressure on the Ukrainian government. The protracted conflict is expected to continue in the near to mid-term, despite minimal changes in territorial control so far as the Ukraine counteroffensive takes shape. It remains unclear when and how the conflict, and the associated areas of unacceptable safety-of-flight risks to U.S. civil aviation, may eventually stabilize. Under these circumstances, the FAA has determined it is not practicable to give preference to a proceeding to incorporate the flight prohibition contained in NOTAM KICZ A0004/22 into the CFR at this time.

The current version of SFAR No. 113, § 91.1607, which only prohibits U.S. civil aviation operations in specified

[3] *Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR)* final rule, 79 FR 22862 (Apr. 25, 2014).

[4] *Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs)* final rule, 79 FR 77857 (Dec. 29, 2014).

[5] *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 83 FR 52954 (Oct. 19, 2018); *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 85 FR 65678 (Oct. 16, 2020); and *Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)* final rule, 86 FR 55485 (Oct. 6, 2021).

[6] *Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)* final rule, 86 FR 55485 (Oct. 6, 2021).

areas of the Dnipro FIR (UKDV) and which the FAA issued prior to the February 2022 full-scale Russian invasion of Ukraine, does not reflect the area in which the FAA has determined unacceptable safety-of-flight risks to U.S. civil aviation currently exist as a result of the Russia-Ukraine conflict. Leaving this obsolete rule in the CFR after its scheduled expiration date of October 27, 2023, has the potential to confuse the regulated community about the FAA's flight prohibition posture with respect to U.S. civil aviation operations in the FIRs managed by Ukraine. Therefore, the FAA is removing SFAR No. 113, § 91.1607 from the CFR. NOTAM KICZ A0004/22 remains in effect and continues to prohibit U.S. civil aviation operations in the Lviv (UKLV), Kyiv (UKBV), Dnipro (UKDV), Simferopol (UKFV), and Odesa (UKOV) FIRs, as well as the Kyiv Upper Information Region (UIR).[7]

The FAA will continue to closely monitor the conflict for changes in the risk environment as it relates to the safety and security of U.S. civil aviation.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a nonsignificant significant regulatory action, as defined in section 3(f) of Executive Order 12866 as amended by Executive Order 14094. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule removes the flight prohibition SFAR for specified areas of the Dnipro FIR (UKDV). Given that the Russia-Ukraine conflict and the associated areas of unacceptable safety-of-flight risks to U.S. civil aviation have yet to stabilize sufficiently, the FAA has determined it is not practicable to give preference to a proceeding to incorporate the flight prohibition contained in NOTAM KICZ A0004/22 into the CFR at this time. To avoid the potential confusion that leaving the obsolete flight prohibition in the CFR after its scheduled expiration date might cause, the FAA is removing SFAR No. 113, § 91.1607.

U.S. civil flight operations in the Lviv (UKLV), Kyiv (UKBV), Dnipro (UKDV), Simferopol (UKFV), and Odesa (UKOV) FIRs, as well as the Kyiv UIR (UKBU), remain prohibited by NOTAM KICZ A0004/22. Accordingly, the removal of SFAR No. 113, § 91.1607, which prohibits U.S. civil aviation operations in airspace fully encompassed within the much larger area of airspace in which NOTAM KICZ A0004/22 prohibits U.S. civil aviation operations, has no incremental costs. This rule alleviates the potential for confusion amongst the regulated community.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This rule removes an existing prohibition on U.S. civil aviation operations in specified areas of the Dnipro FIR (UKDV), a location outside the United States, that is scheduled to expire on October 27, 2023. As this rule relates to a location outside the United States, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $177 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has

[7] NOTAMS KICZ A0003/22 and A0005/22 also remain in effect.

determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VI. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov*. A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

§ 91.1607 [Reserved]

■ 2. Remove and reserve § 91.1607.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

Polly E. Trottenberg,

Acting Administrator.

[FR Doc. 2023–23656 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[FR–6411–N–01]

Section 108 Loan Guarantee Program: Announcement of Fee To Cover Credit Subsidy Costs for FY 2024

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of fee.

SUMMARY: This document announces the fee that HUD will collect from borrowers of loans guaranteed under HUD's Section 108 Loan Guarantee Program (Section 108 Program) to offset

the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in Fiscal Year 2024 in the event HUD is required or authorized by statute to do so, notwithstanding subsection (m) of section 108 of the Housing and Community Development Act of 1974.

DATES: *Applicability Date:* October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone number 202–402–4563 (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.* FAX inquiries (but not comments) may be sent to Mr. Webster at 202–708–1798 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (division K of Pub. L. 113–235, approved December 16, 2014) (2015 Appropriations Act) provided that ''the Secretary shall collect fees from borrowers, notwithstanding subsection (m) of such section 108, to result in a credit subsidy cost of zero for guaranteeing . . .'' Section 108 loans. Section 108(m) of the Housing and Community Development Act of 1974 states that ''No fee or charge may be imposed by the Secretary or any other Federal agency on or with respect to a guarantee made by the Secretary under this section after February 5, 1988.'' Identical language was continued or included in the Department's continuing resolutions and appropriations acts authorizing HUD to issue Section 108 loan guarantees during Fiscal Years (FYs) 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023. The Fiscal Year (FY) 2024 HUD appropriations bills under consideration [1] also have identical language suspending the prohibition against charging fees for loans issued with Section 108 guarantees after February 5, 1988, and requiring that the Secretary collect fees from borrowers to result in a credit subsidy cost of zero for the Section 108 Program.

On November 3, 2015, HUD published a final rule (80 FR 67626) that amended the Section 108 Program regulations at 24 CFR part 570 to establish additional procedures, including procedures for announcing the amount of the fee each fiscal year when HUD is required to offset the credit subsidy costs to the Federal Government to guarantee Section 108 loans. For FYs 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 HUD published notifications to set the fees.[2]

II. FY 2024 Fee: 1.64 Percent of the Principal Amount of the Loan

If authorized by statute, this document sets the fee for Section 108 loan disbursements under loan guarantee commitments awarded for FY 2024 at 1.64 percent of the principal amount of the loan. HUD will collect this fee from borrowers of loans guaranteed under the Section 108 Program to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in FY 2024 if either of the FY 2024 HUD appropriations bill under consideration is enacted, or if HUD is otherwise required or authorized by statute to collect fees from borrowers to offset the credit subsidy costs of the guaranteed loans, notwithstanding subsection (m) of section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(m)). For this fee announcement, HUD is not changing the underlying assumptions or creating new considerations for borrowers. The calculation of the FY 2024 fee uses a similar calculation model as the FY 2016, FY 2017, FY 2018, FY 2019, FY 2020, FY 2021, FY 2022, and FY 2023 fee notifications, but incorporates updated information regarding the composition of the Section 108 portfolio and the timing of the estimated future cash flows for defaults and recoveries. The calculation of the fee is also affected by the discount rates required to be used by HUD when calculating the present value of the future cash flows as part of the Federal budget process.

As described in 24 CFR 570.712(b), HUD's credit subsidy calculation is based on the amount required to reduce the credit subsidy cost to the Federal Government associated with making a Section 108 loan guarantee to the amount established by applicable appropriation acts. As a result, HUD's credit subsidy cost calculations incorporated assumptions based on: (1) data on default frequency for municipal debt where such debt is comparable to loans in the Section 108 loan portfolio; (2) data on recovery rates on collateral security for comparable municipal debt; (3) the expected composition of the Section 108 portfolio by end users of the guaranteed loan funds (*e.g.,* third-party borrowers and public entities); and (4) other factors that HUD determined were relevant to this calculation (*e.g.,* assumptions as to loan disbursement and repayment patterns).

Taking these factors into consideration, HUD determined that the fee for disbursements made under loan guarantee commitments awarded in FY 2024 will be 1.64 percent, which will be applied only at the time of loan disbursements. Note that future notifications may provide for a combination of upfront and periodic fees for loan guarantee commitments awarded in future fiscal years but, if so, HUD will provide the public an opportunity to comment if appropriate under 24 CFR 570.712(b)(2).

The expected cost of a Section 108 loan guarantee is difficult to estimate using historical program data because there have been no defaults in the history of the program that required HUD to invoke its full faith and credit guarantee or use the credit subsidy reserved each year for future losses.[3] This is due to a variety of factors, including the availability of Community Development Block Grant (CDBG) funds as security for HUD's guarantee as provided in 24 CFR 570.705(b). As authorized by Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308), borrowers may make payments on Section 108 loans using CDBG grant funds. Borrowers may also make Section 108 loan payments from other anticipated sources but continue to have CDBG funds available should they encounter shortfalls in the anticipated repayment source. Despite the

[1] Division A, Title II of House Markup (*https://docs.house.gov/meetings/AP/AP00/20230718/116260/BILLS-118--AP--AP00-FY24THUDFullCommitteeMark.pdf*), AND Title II of Senate Bill S.2437 of 118th Congress (*https://www.appropriations.senate.gov/imo/media/doc/fy24_thud_bill_text.pdf*) under the heading ''Community Development Loan Guarantees Program Account''.

[2] 80 FR 67634 (November 3, 2015), 81 FR 68297 (October 4, 2016), 82 FR 44518 (September 25, 2017), 83 FR 50257 (October 5, 2018), 84 FR 35299 (July 23, 2019), 85 FR 52479 (August 26, 2020), 86 FR 59302 (October 27, 2021), and 87 FR 53662 (September 1, 2022) respectively.

[3] U.S. Department of Housing and Urban Development, *Study of HUD's Section 108 Loan Guarantee Program,* (prepared by Econometrica, Inc. and The Urban Institute), September 2012, at pp. 73–74. This fact has not changed since the issuance of this report.

program's history of no defaults, Federal credit budgeting principles require that the availability of CDBG funds to repay the guaranteed loans cannot be assumed in the development of the credit subsidy cost estimate (see 80 FR 67629, November 3, 2015). Thus, the estimate must incorporate the risk that alternative sources are used to repay the guaranteed loan in lieu of CDBG funds, and that those sources may be insufficient. Based on the rate that CDBG funds are used annually for repayment of loan guarantees, HUD's calculation of the credit subsidy cost must acknowledge the possibility of future defaults if those CDBG funds were not available. The fee of 1.64 percent of the principal amount of the loan will offset the expected cost to the Federal Government due to default, financing costs, and other relevant factors. To arrive at this measure, HUD analyzed data on comparable municipal debt over an extended period. The estimated rate is based on the default and recovery rates for general purpose municipal debt and industrial development bonds. The cumulative default rates on industrial development bonds were higher than the default rates on general purpose municipal debt during the period from which the data were taken. These two subsectors of municipal debt were chosen because their purposes and loan terms most closely resemble those of Section 108 guaranteed loans.

In this regard, Section 108 guaranteed loans can be broken down into two categories: (1) loans that finance public infrastructure and activities to support subsidized housing (other than financing new construction) and (2) other development projects (*e.g.,* retail, commercial, industrial). The 1.64 percent fee was derived by weighting the default and recovery data for general purpose municipal debt and the data for industrial development bonds according to the expected composition of the Section 108 portfolio by corresponding project type. Based on the dollar amount of Section 108 loan guarantee commitments awarded from FY 2018 through FY 2022, HUD expects that 58.4 percent of the Section 108 portfolio will be similar to general purpose municipal debt and 41.6 percent of the portfolio will be similar to industrial development bonds. In setting the fee at 1.64 percent of the principal amount of the guaranteed loan, HUD expects that the amount generated will fully offset the cost to the Federal Government associated with making guarantee commitments awarded in FY 2024. Note that the fee increased from 0.94 percent in FY 2023 to 1.64 percent in FY 2024, an increase of 0.70 percentage points in the level of fee charged.

This document establishes a statutorily required fiscal requirement in the form of a fee based on rate and cost determinations that does not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023–23665 Filed 10–25–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0817]

Special Local Regulations; Key West World Championship, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Key West World Championship to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in Key West, FL. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without permission from the Captain of the Port Key West or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced from 10 a.m. until 7 p.m., on November 8, 10, and 12, 2023, for the location identified in paragraph (b), Item 4 in table 1 to § 100.701.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Hailye Wilson, Sector Key West Waterways Management Division, Coast Guard; phone 305–292–8768, email *Hailye.M.Wilson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.701 for the Key West World Championship regulated area identified in table 1 to § 100.701, paragraph (b), Item 4, from 10 a.m. to 7 p.m. on November 8, 10, and 12, 2023. This action is being taken to provide for the safety of life on navigable waterways during this 3-day event. Our regulation for recurring marine events, Sector Key West, § 100.701, paragraph (b), Item 4, specifies the location of the regulated area for the Key West World Championship, which encompasses a portion of the Atlantic Ocean located southwest of Key West, Florida. During the enforcement period, as reflected in § 100.701(c), all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the Captain of the Port Key West or a designated representative.

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

Jason Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2023–23649 Filed 10–25–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[CG Docket No. 22–2; FCC 22–86; FR ID 179821]

Empowering Broadband Consumers Through Transparency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission incorporates the compliance dates for the broadband consumer label rules per the *Broadband Label Order.* The rules require broadband internet access service providers to display, at the point of sale, labels that disclose certain information about broadband prices, introductory rates, data allowances, and broadband speeds, and to include links to information about their network management practices, privacy policies, and the Commission's Affordable Connectivity Program.

DATES: *Effective date:* October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon of the Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (202) 418–0346 or *Erica.McMahon@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission publishes this document to incorporate the compliance dates for § 8.1(a)(1) through (6) of the rules adopted in the *Broadband Label Order,* 87 FR 76959 (December 16, 2022). In a document published at 88 FR 69883 (October 10, 2023), the Commission announced the compliance dates and stated that it would publish a document in the **Federal Register** revising § 8.1(a)(7) to incorporate the compliance dates.

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

List of Subjects in 47 CFR Part 8

Cable television, Common carriers, Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 8 as follows:

PART 8—INTERNET FREEDOM

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 47 U.S.C. 154, 201(b), 257, 303(r), and 1753.

■ 2. Amend § 8.1 by revising paragraph (a)(7) to read as follows:

§ 8.1 Transparency.

(a) * * *

(7) Compliance with paragraphs (a)(1), (2), and (4) through (6) of this section for providers with 100,000 or fewer subscriber lines is required as of October 10, 2024, and for all other providers is required as of April 10, 2024, except that compliance with the requirement in paragraph (a)(2) of this section to make labels accessible in online account portals will not be required for all providers until October 10, 2024. Compliance with paragraph (a)(3) of this section is required for all providers as of October 10, 2024.

* * * * *

[FR Doc. 2023–23415 Filed 10–25–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–993; MB Docket No. 22–430; RM–11939; FR ID 181208]

Radio Broadcasting Services; Wharton, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Federal Communications Commission's (Commission) rules, by allotting Channel 277C2 at Wharton, Texas, as a second local service. A staff engineering analysis indicates that Channel 277C2 can be allotted to Wharton, Texas, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 2.1 km (1.3 miles) west of the community. The reference coordinates are 29–18–26 NL and 96–07–50 WL.

DATES: Effective December 4, 2023.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted October 19, 2023 and released October 19, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments under Texas, by adding in alphabetical order an entry for ''Wharton'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
Texas	
* * * * *	
Wharton	277C2
* * * * *	

* * * * *

[FR Doc. 2023–23659 Filed 10–25–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–279; RM–11956; DA 23–981; FR ID 179884]

Television Broadcasting Services Tulare, California

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau) has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by One Ministries, Inc. (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *3 to Tulare, California (Tulare), in the Table of TV Allotments as the community's first local television service. The Petitioner filed comments in support of the petition, as required by

the Commission's rules, reaffirming its commitment to apply for channel *3, and if authorized, to construct the facility.

DATES: Effective November 27, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov;* or Emily Harrison, Media Bureau, at (202) 418–1665 or *Emily.Harrison@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 57032 on August 22, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel *3. No other comments were received.

The Bureau believes the public interest would be served by allotting channel *3 at Tulare, which has a population of 70,733 and clearly qualifies for community of license status for allotment purposes. As stated in the NPRM, Tulare is known for its agricultural production and is home to the nation's largest single-site dairy complex. In addition, Petitioner states that Tulare has a mayor and five council members; police, public works, planning, engineering, and community and economic development departments; a library, school district; and numerous businesses and places of worship. In addition, the proposal would result in a first local service to Tulare under the Commission's second allotment priority. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *3 can be allotted to Tulare consistent with the minimum geographic spacing requirements for new DTV allotments in section 73.623(d) of the rules. In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Tulare is encompassed by the 35 dBμ contour.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–279; RM–11956; DA 23–981, adopted October 16, 2023, and released October 16, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under California, by adding an entry for Tulare to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
California	
* * * * *	
Tulare	*3
* * * * *	

[FR Doc. 2023–23468 Filed 10–25–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–281; RM–11958; DA 23–998; FR ID 181232]

Television Broadcasting Services Alamogordo, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau) has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by Vision Broadcasting Network, Inc. (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *4 to Alamogordo, New Mexico (Alamogordo), in the Table of TV Allotments as the community's first local television service. The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel *4 and if authorized, to construct the facility.

DATES: Effective November 27, 2023.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at (202) 418–1665 or *Emily.Harrison@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 58210 on August 25, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel *4. No other comments were received.

The Bureau believes the public interest would be served by allotting channel *4 at Alamogordo, which, as of 2020, has a population of 30,898 and clearly qualifies for community of license status for allotment purposes. Alamogordo is the county seat of Otero County and has its own seat of government consisting of a mayor, six Commissioners, and a city manager, as well as its own police, fire, public works, utility, planning, engineering, and community and economic development departments. Alamogordo also has a library, school district, numerous businesses and places of worship, and its own ZIP Code. The proposal would also result in a first local service to Alamogordo under the Commission's second allotment priority. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *4 can be allotted to Alamogordo consistent with the minimum geographic spacing

requirements for new DTV allotments in section 73.623(d) of the rules. In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Alamogordo is encompassed by the 35 dBμ contour.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–281; RM–11958; DA 23–998, adopted October 20, 2023, and released October 20, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under New Mexico, by adding an entry for Alamogordo to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
New Mexico	
* * * * *	
Alamogordo	*4
* * * * *	

[FR Doc. 2023–23663 Filed 10–25–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

Prohibited Items

AGENCY: Transportation Security Administration, DHS.

ACTION: Interpretive rule.

SUMMARY: The Transportation Security Administration (TSA) is amending its interpretive rule that provides guidance to the public on the types of items that TSA considers to be weapons, explosives, and incendiaries, which are prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document adds a limited type of unpressurized gas cylinders for air guns used in competitive shooting to those items that may be placed in checked baggage but continue to be prohibited in sterile areas and aircraft cabins. This document also provides clarification on prohibited sharp objects and certain self-defense items.

DATES: This rule is effective October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Justin Keear, Requirements Development Branch, Requirements and Capabilities Analysis, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6016; Telephone (571) 422–7202; email *ORCAPIL@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at *https://www.govinfo.gov/app/collection/FR/* to view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at *https://www.federalregister.gov.* Copies are also available by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section.

Statutory and Regulatory Background

TSA is responsible for security in all modes of transportation, including aviation.[1] In addition, TSA is required to screen all passengers and property, including carry-on and checked baggage, and other articles.[2] Under TSA's regulation on acceptance and screening of individuals and accessible property, 49 CFR 1540.111(a), an individual (other than law enforcement personnel or other authorized individuals) may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under this subchapter;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under 49 CFR 1544.201, 1546.201, or 1562.23.

Under 49 CFR 1540.111(c), a passenger may not transport the following items in checked baggage: any loaded firearms; any unloaded firearms unless it meets specific packaging requirements and is properly declared; or any unauthorized explosive or incendiary.

Since February 2003, TSA has published a series of interpretive rules that provide guidance to the public on the types of property TSA considers to be weapons, explosives, and incendiaries prohibited on an individual's person, accessible property, or in checked baggage, as well as items that may be permitted, if they clear TSA's required screening.[3]

As noted in the first interpretive rule, neither the prohibited items list nor the permitted items list in this regulatory interpretation contains all possible items.[4] As a result, items not specifically included on the prohibited items list may be prohibited in a sterile area and the cabin of an aircraft.

[1] *See* 49 U.S.C. 114(d).

[2] *See* 49 U.S.C. 44901(a).

[3] *See* 68 FR 7444 (Feb. 14, 2003) (initial interpretive rule); 68 FR 9902 (Mar. 3, 2003) (technical corrections); 70 FR 9877 (Mar. 1, 2005) (prohibiting lighters); 70 FR 51679 (Aug. 31, 2005) (permitting certain small scissors that persons with ostomies need); 70 FR 72930 (Dec. 8, 2005) (allowing small scissors and small tools); and 72 FR 40262 (July 24, 2007) (new enforcement policy regarding lighters, allowing one lighter).

[4] 68 FR at 7445.

Screeners have discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item poses a potential threat, regardless of whether the item is on the prohibited items list. Moreover, if future information or events demonstrate the need to prohibit items that TSA has previously considered permitted, TSA may prohibit individuals from bringing these items into the sterile area or onboard the aircraft without first publishing a change to this interpretive rule. This flexibility is consistent with Congress' direction that screeners be proficient in recognizing new threats and weapons [5] as well as TSA's mission and authorities to protect transportation security from evolving threats. To provide as much notice to the public as possible, TSA has created an interactive capability for the public on *https://www.tsa.gov* that provides up-to-date information on prohibited items, including hazardous items prohibited by the Federal Aviation Administration (FAA), and those that are permitted if properly packaged and screened.[6]

Statutory Requirements for Revisions to the Prohibited Items List

Section 1962 of the TSA Modernization Act requires TSA to periodically review and amend, as necessary, the prohibited items list.[7] Before determining whether to include or remove an item from the prohibited items list, TSA is required to: (1) research and evaluate the impact, if any, the amendment would have on security risks and screening operations, including effectiveness and efficiency; (2) research and evaluate whether the amendment is consistent with international standards and guidance, including those of the International Civil Aviation Organization; and (3) consult with appropriate aviation security stakeholders, including the Aviation Security Advisory Committee (ASAC).[8] With the exception of plastic or round-bladed butter knives, TSA is prohibited from amending the interpretive rule to authorize any knife to be permitted in an airport sterile area or in the aircraft cabin.[9]

TSA established a process to ensure compliance with these statutory requirements. TSA Management Directive 4000.2 (August 25, 2021) establishes TSA's Office of Requirements and Capabilities Analysis as the lead office for revisions to the prohibited items list. All changes to the prohibited items list require review and approval by TSA's Executive Risk Steering Committee, a risk assessment (to include determining potential impact on operations), and a robust process for engagement with internal and external stakeholders. When determining to make these revisions to the prohibited items list, TSA considered, among other factors, known security risks based on intelligence, incidents, and feedback from stakeholders. From information provided by the U.S. intelligence and law enforcement communities, TSA knows that terrorists remain focused on attacking commercial aviation. The use of simple weapons in the aircraft cabin to overpower the flight crew is a known threat tactic.

Impact on screening operations. TSA also considered the effects of these changes on screening operations, including effectiveness and efficiency. For example, the clarifications to the definitions of sharp objects being made through this revision to the prohibited items list are intended to reduce confusion and training burdens across the screening workforce, thereby enabling TSA screeners to focus more effectively and efficiently on searching for prohibited items.

Alignment with International Standards. TSA reviewed all corresponding passenger screening security standards from the International Civil Aviation Organization and determined that all clarifications to the list are consistent with those standards.

Engagement with stakeholders. TSA solicited input and feedback from the FAA, the ASAC, and several industry trade organizations with an interest in aviation security on the changes relating to gas cylinders for air guns. No external stakeholders provided substantive feedback. As discussed below, the remaining changes relating to definitions of sharp objects and club-like items are clarifications to the prohibited items list consistent with current screening policies; they do not represent changes to current limitations or requirements, and they neither add nor remove items from the list. Accordingly, TSA did not engage extensively with ASAC or other interested stakeholders when preparing those revisions.

Clarifications to the Prohibited Items List

Sharp objects: Blade holding devices and table knives. TSA is making clarifications to the prohibited items list for categories of sharp objects prohibited under Section I.B. of the interpretive rule. As shown in Table 1, these changes include a minor revision to the types of permitted knives, intended to clarify the features of some common table knives that may be carried in the passenger cabin. The current text of the prohibited items list prompts recurring questions by TSA screeners regarding the identity of the knife as a butter knife, the existence of a point, the features of the blade edge, the presence of serrations, and how to decide if a knife with a particular combination of those features is permitted or not. Consistent with the requirements of the TSA Modernization Act,[10] the revised text is intended to clarify that only knives with no sharp edges, no points, and no serrations are permitted. Commonly permissible examples would include plastic cutlery and butter knives (the butter knife exception is limited to knives that are round-bladed, blunt-edged, without serration, and no longer than a common table knife). There is no change to the allowance for plastic cutlery, which continues to be permitted. The new definition will simplify training and operational requirements and will allow TSA's screening workforce to focus more appropriately on screening for more dangerous items.

The second change provides clarification regarding box cutters and utility knives. Recognizing the potential for empty box cutter and utility knife housings to be used to enhance the lethality of a hidden blade, TSA determined it is necessary to provide clarification that both the blades and housings are prohibited.

[5] 49 U.S.C. 44935(h)(1).

[6] *https://www.tsa.gov/travel/security-screening/whatcanibring/all.*

[7] Division K, FAA Reauthorization Act of 2018, Public Law 115–254 (132 Stat. 3186; Oct. 5, 2018) as codified at 49 U.S.C. 44901 note [hereinafter, TSA Modernization Act]. This provision is consistent with recommendations from a 2015 review by the Government Accountability Office (GAO) of TSA's approach to prohibiting items aboard passenger aircraft. GAO published a report recommending that TSA review and revise the prohibited items list regularly, and engage with internal and external stakeholders, including the ASAC, in the course of these reviews. *See* GAO–15–261 Report, *Aviation Security TSA Should Take Additional Action to Obtain Stakeholder Input when Modifying the Prohibited Items List,* GAO–15–261 (Feb. 2015).

[8] TSA Modernization Act, at § 1962(b).

[9] *Id.* at § 1962(c).

[10] *Id.*

TABLE 1—CHANGES TO THE DEFINITION OF SHARP OBJECTS IN THE PROHIBITED ITEMS LIST SECTION I.B.

Current wording	New wording
(5) Knives of any length, except rounded-blade butter and plastic cutlery.	(5) Knives of any length, except plastic cutlery and butter knives (the butter knife exception is limited to knives that are round-bladed, blunt-edged, without serration, and no longer than a common table knife).
(7) Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors.	(7) Razor-type blades, such as blades for box cutters, utility knives, and non-disposable safety razors. This prohibition includes box cutter and utility knife housings, with or without the razor blade, but excludes disposable safety razors and safety razor blade cartridges.

Club-like items: Cat-Eyes. Cat-eyes are a type of brass knuckle made in the stylized representation of a cat's face, often made of metal, and commonly marketed as keychains. The eyes of the cat are finger holes and the ears of the cat are sharp points that extend beyond the fingers when the weapon is held in a closed fist, as with other brass knuckles. TSA screeners have requested clarification on whether these items are prohibited, seeking clarification of whether the items should be treated as a club-like item or sharp object. Clarifying that TSA considers cat-eyes to be a type of brass knuckle will simplify training and operational requirements and provide clarity to the public.

Gas cylinders for air guns. TSA currently prohibits all compressed air guns and compressed gas cylinders on person or in accessible property.[11] TSA permits unloaded compressed air guns to be transported in checked baggage, but the agency has not included a clear exception for the compressed gas cylinders used in these guns through the prohibited items list. In response to a request from the competitive shooting industry, TSA examined available intelligence information and the characteristics of unpressurized competitive shooting cylinders for air guns. TSA conducted a risk analysis that compared the gas cylinders to other similar items that are currently allowed in checked baggage and found that the carriage of a maximum of four of these unpressurized cylinders in checked baggage would not introduce an unacceptable level of risk to passengers or aviation security, even if carried along with their associated air rifle or air pistol. TSA has, in the past, made limited exceptions consistent with this change, such as for Olympic competitors and the Wounded Warrior program, without incident.

Through this revision to the interpretive rule, TSA is permitting travelers to transport up to four unpressurized compressed gas cylinders of limited size and capacity intended for air guns. Each passenger may carry no more than four such cylinders, and none of the gas cylinders may exceed 24 inches in length, 3 inches in diameter, or 0.1 cubic feet in total rated volume.

All checked baggage will continue to be screened prior to being loaded on an aircraft. This screening will verify that the items within meet the criteria for transport described in this notice and are not concealing other prohibited items, explosives, or improvised explosive devices or components. The final decision rests with TSA on whether to allow items to be transported, and TSA reserves the ability to prohibit any items that it deems to be a threat to transportation security. As part of risk-based security, TSA may prohibit items discovered during certain types of screening that would otherwise be permitted.

Future Changes to the Prohibited Items List

Consistent with the requirements in the TSA Modernization Act, TSA intends to review the prohibited items list on a periodic basis and will revise the list as operational circumstances and the threat landscape may require. TSA will engage with appropriate internal and external stakeholders in the course of the periodic review, as required by the TSA Modernization Act. TSA will continue to announce future changes in the **Federal Register** and will continue to add any changes to TSA's ''What Can I Bring?'' list (or equivalent) on *https://www.tsa.gov.*

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 of September 30, 1993 (Regulatory Planning and Review), as supplemented by E.O. 13563 of January 18, 2011 (Improving Regulation and Regulatory Review) and E.O. 14094 of April 6, 2023 (Modernizing Regulatory Review) directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA)[12] requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act of 1979[13] prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995[14] (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rulemakings that include a Federal mandate likely to result in the expenditure by State, Local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Orders 12866 and 13563 Assessment

Under the requirements of E.O. 12866, as amended by E.O. 14094, and E.O. 13563, agencies must assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). These requirements were supplemented by E.O. 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this interpretive rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

In conducting these analyses, TSA made the following determinations:

1. This interpretive rule explains to the public, airport personnel, screeners, and airlines, how TSA interprets certain

[11] *See* Sections I.A(2) (compressed air guns) and I.F(2) (compressed gas cylinders).

[12] Public Law 96–354 (94 Stat. 1164; Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996).

[13] Public Law 96–39 (93 Stat. 144; July 26, 1979) (codified at 19 U.S.C. 2531–2533).

[14] Public Law 104–4 (109 Stat. 66; Mar. 22, 1995) (codified at 2 U.S.C. 1181–1538).

terms used in an existing rule, 49 CFR 1540.111.

2. This interpretive rule will not constitute a barrier to international trade.

3. This interpretive rule does not impose an unfunded mandate on State, Local, or Tribal governments, or on the private sector.

This interpretive rule provides an interpretation of an existing regulation, 49 CFR 1540.111, to provide clarity regarding existing prohibitions and to narrow the scope of the prohibition by permitting certain compressed gas cylinders in checked baggage. As was the case with previous interpretive rules narrowing the scope of the prohibition,[15] TSA does not anticipate that the public or industry will bear any compliance costs associated with this interpretive rule.

The decision to allow a limited size and number of compressed gas cylinders in checked baggage is made as part of TSA's overall risk-based security approach and is consistent with the requirement to review the prohibited items list in section 1962 of the TSA Modernization Act of 2018.[16]

Regulatory Flexibility Determination

The RFA requires that agencies consider the impacts of their rules on small entities. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this interpretive rule and TSA is not preparing an analysis under 5 U.S.C. 553 as TSA is not required to publish a notice of proposed rulemaking.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Trade Agreement Act does not consider legitimate domestic objectives, such as essential security, as unnecessary obstacles. The statute also requires that international standards be considered and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this interpretative rule and has determined this interpretive rule would not have an adverse impact on international trade.

Unfunded Mandates Assessment

Title II of UMRA, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, Local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This interpretive rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply and TSA has not prepared a statement.

Executive Order 13132, Federalism

A rule has implications for federalism under E.O. 13132 of August 10, 1999 (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. TSA has analyzed this proposed rule under E.O. 13132 and determined that it does not have implications for federalism.

Environmental Analysis

TSA has reviewed this interpretive rule for purposes of the National Environmental Policy Act of 1969 (NEPA)[17] and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion number A3(b) in DHS Management Directive 023–01 (formerly Management Directive 5100.1), Environmental Planning Program, which guides TSA compliance with NEPA.

Energy Impact

TSA assessed the energy impact of this action in accordance with the Energy Policy and Conservation Act (EPCA),[18] and determined that this interpretive rule is not a major regulatory action under the provisions of the EPCA.

Amendments to Interpretation

TSA is making the following changes to the prohibited items list:

1. Currently, section I.B(5) reads: ''Knives of any length, except rounded-blade butter and plastic cutlery.'' TSA is revising this section to read: ''Knives of any length, except plastic cutlery and butter knives (the butter knife exception is limited to knives that are round-bladed, blunt-edged, without serration, and no longer than a common table knife.''

2. Currently, section I.B(7) reads: ''Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors. TSA is revising this section to read: ''Razor-type blades, such as blades for box cutters, utility knives, and non-disposable safety razors. This prohibition includes box cutter and utility knife housings, with or without the razor blade, but excludes disposable safety razors and disposable safety razor blade cartridges.''

3. TSA is revising section I.C(4) to add cat-eyes, to read: ''Brass knuckles, including cat-eyes.''

4. TSA added specific citations to regulatory cross-references in Section III.A and III.B.

5. TSA is adding section III.E. to read: ''*Compressed gas cylinders for air guns.* Subject to the following limitations, a passenger may place air-powered rifles and pistols, components, ammunition, and accessories in checked baggage: (1) only four gas cylinders specifically intended for such rifles and pistols are permitted per person, (2) all of the gas cylinders must be unpressurized, and (3) none of the gas cylinders may exceed 24 inches in length, 3 inches in diameter, or 0.1 cubic feet in total rated volume.''

6. TSA made technical corrections to update statutory references, address typographical errors, and correct or clarify internal cross-references.

The following is the list of prohibited items and permitted items reprinted in its entirety, with the changes inserted.

Prohibited Items and Permitted Items Interpretation

I. Prohibited Items

For purposes of 49 U.S.C. 40101 *et seq.,* 49 U.S.C. 44901 *et seq.,* and 49 CFR 1540.111, TSA interprets the terms ''weapons, explosives, and incendiaries'' to include the items listed below. Accordingly, passengers may not carry these items as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft.

A. Guns and firearms, such as:

(1) BB guns.

(2) Compressed air guns.

(3) Firearms.

(4) Flare pistols.

(5) Gun lighters.

[15] *See, e.g.,* 70 FR 51679 (Aug. 31, 2005) and 70 FR 72930 (Dec. 8, 2005).

[16] *See supra* note 6.

[17] As codified at 42 U.S.C. 4321–4347.

[18] As codified at 42 U.S.C. 6362.

(6) Parts of guns and firearms.
(7) Pellet guns.
(8) Realistic replicas of firearms.
(9) Spear guns.
(10) Starter pistols.
(11) Stun guns/cattle prods/shocking devices.

B. Sharp Objects, such as:
(1) Axes and hatchets.
(2) Bows and arrows.
(3) Reserved.
(4) Ice axes/Ice picks.
(5) Knives of any length, except plastic cutlery and butter knives (the butter knife exception is limited to knives that are round-bladed, blunt-edged, without serration, and no longer than a common table knife).
(6) Meat cleavers.
(7) Razor-type blades, such as box cutters, utility knives, and non-disposable razors. This prohibition includes box cutter and utility knife housings, with or without the blade, but excludes disposable safety razors and disposable safety razor blade cartridges.
(8) Sabers.
(9) Reserved.
(10) Scissors, metal with pointed tips and a blade length greater than 4 inches as measured from the fulcrum.
(11) Reserved.
(12) Swords.
(13) Throwing stars (martial arts).

C. Club-Like Items, such as:
(1) Baseball bats.
(2) Billy clubs.
(3) Blackjacks.
(4) Brass knuckles, including cat-eyes.
(5) Cricket bats.
(6) Reserved.
(7) Golf clubs.
(8) Reserved.
(9) Hockey sticks.
(10) Lacrosse sticks.
(11) Martial arts weapons, including nunchucks, and kubatons.
(12) Night sticks.
(13) Pool cues.
(14) Ski poles.
(15) Reserved.

D. All explosives, including
(1) Ammunition.
(2) Blasting caps.
(3) Dynamite.
(4) Fireworks.
(5) Flares in any form.
(6) Gunpowder.
(7) Hand grenades.
(8) Plastic explosives.
(9) Realistic replicas of explosives.

E. Incendiaries, such as:
(1) Aerosols, any, except for personal care or toiletries in limited quantities.
(2) Fuels, including cooking fuels and any flammable liquid fuel.
(3) Gasoline.
(4) Gas torches, including micro-torches and torch lighters.
(5) Lighter fluid.
(6) Strike-anywhere matches.
(7) Turpentine and paint thinner.
(8) Realistic replicas of incendiaries.
(9) All lighters.

F. Disabling chemicals and other dangerous items, such as:
(1) Chlorine for pools and spas.
(2) Compressed gas cylinders (including fire extinguishers).
(3) Liquid bleach.
(4) Mace.
(5) Pepper spray.
(6) Spillable batteries, except those in wheelchairs.
(7) Spray paint.
(8) Tear gas.

G. Tools, such as:
(1) Crowbars.
(2) Drills and drill bits, including cordless portable power drills.
(3) Hammers.
(4) Saws and saw blades, including cordless portable power saws.
(5) Other tools greater than 7 inches in length, including pliers, screwdrivers, and wrenches.

II. Permitted Items

For purposes of 49 U.S.C. 40101 *et seq.* and 49 CFR 1540.111, TSA does not consider the items on the following lists as weapons, explosives, and incendiaries because of medical necessity or because they appear to pose little risk if, as is required, they have passed through screening. Therefore, passengers may carry these items as accessible property or on their person through passenger screening checkpoints and into airport sterile areas and the cabins of passenger aircraft.

A. The following medical and personal items:
(1) Braille note taker, slate and stylus, and augmentation devices.
(2) Cigar cutters.
(3) Corkscrews.
(4) Cuticle cutters.
(5) Diabetes-related supplies/equipment (once inspected to ensure prohibited items are not concealed), including: insulin and insulin loaded dispensing products; vials or box of individual vials; jet injectors; pens; infusers; and preloaded syringes; and an unlimited number of unused syringes, when accompanied by insulin; lancets; blood glucose meters; blood glucose meter test strips; insulin pumps; and insulin pump supplies. Insulin in any form or dispenser must be properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(6) Eyeglass repair tools, including screwdrivers.
(7) Eyelash curlers.
(8) Knives, round-bladed butter or plastic.
(9) Reserved.
(10) Matches (maximum of four books, strike on cover, book type).
(11) Nail clippers.
(12) Nail files.
(13) Nitroglycerine pills or spray for medical use, if properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(14) Personal care or toiletries with aerosols, in limited quantities.
(15) Prosthetic device tools and appliances (including drill, Allen wrenches, pullsleeves) used to put on or remove prosthetic devices, if carried by the individual with the prosthetic device or his or her companion.
(16) Safety razors (including disposable razors).
(17) Scissors, plastic or metal with blunt tips, and metal with pointed tips and a blade 4 inches or less in length as measured from the fulcrum.
(18) Tweezers.
(19) Umbrellas (once inspected to ensure prohibited items are not concealed).
(20) Walking canes (once inspected to ensure prohibited items are not concealed).

B. Toys, hobby items, and other items posing little risk, such as:
(1) Knitting and crochet needles.
(2) Toy Transformer® robots and the like.
(3) Toy weapons (if not realistic replicas).

C. The following types of tools:
(1) Pliers, screwdrivers, wrenches, and other tools 7 inches or less in length, excluding crowbars, drills, hammers, and saws.

III. Items Prohibited in Sterile and Cabin Areas, but Permitted in Checked Baggage

Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals, and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in the Department of Transportation's hazardous materials regulations provided in 49 CFR part 175.

A. Pepper spray or mace. A passenger may place one container of self-defense spray in checked baggage, not exceeding 4 fluid ounces by volume, but only if it incorporates a positive means to prevent accidental discharge. *See* 49 CFR 175.10(a)(9) and 49 CFR 171.8 for other applicable requirements.

B. Small arms ammunition. A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. *See* 49 CFR 175.10(a)(8) for other applicable requirements.

C. Unloaded firearms. A passenger may place an unloaded firearm or starter pistol in checked baggage if the passenger makes the following declarations to the airline operator, either orally or in writing, before checking the baggage: (1) the passenger has a firearm in his or her bag and that it is unloaded; (2) the firearm is carried in a hard-sided container; and (3) the container is locked, and only the passenger has the key or combination. *See* 49 CFR 1540.111(c) for other applicable requirements.

D. Club-like items. A passenger may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

E. Compressed gas cylinders for air guns. Subject to the following limitations, a passenger may place air-powered rifles and pistols, components, ammunition, and accessories in checked baggage: (1) only four gas cylinders specifically intended for such rifles and pistols are permitted per person, (2) all of the gas cylinders must be unpressurized, and (3) none of the gas cylinders may exceed 24 inches in length, 3 inches in diameter, or 0.1 cubic feet in total rated volume.

IV. Lists Are Not Exclusive

Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call the Hazardous Materials Information Center at 1–800–467–4922 for more information.

Dated: October 20, 2023.

David P. Pekoske,

Administrator.

[FR Doc. 2023–23653 Filed 10–25–23; 8:45 am]

BILLING CODE 9110–05–P

Proposed Rules

Federal Register
Vol. 88, No. 206
Thursday, October 26, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2003; Project Identifier AD–2022–01620–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 757 airplanes. This proposed AD was prompted by reports of operators finding frequent and severe damage to the blowout vent grills of the aft soft bulkhead lining in the aft lower lobe cargo compartment. This proposed AD would require repetitive detailed inspections of certain decompression panels and pressure equalization valves, as applicable, in the forward and aft lower lobe cargo compartments for damage, and applicable on-condition actions. For certain airplanes, this proposed AD would also require replacement of a certain soft bulkhead with a rigid bulkhead. For certain other airplanes, this proposed AD would require installation of doublers to a certain bulkhead assembly panel. 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 December 11, 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–2023–2003; 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–2023–2003.

FOR FURTHER INFORMATION CONTACT: Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 562–627–5353; email: *Katherine.Venegas@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–2023–2003; Project Identifier AD–2022–01620–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 Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 562–627–5353; email: *Katherine.Venegas@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

Operators have found, on multiple aircraft, frequent and severe damage to the blowout vent grills of the aft soft bulkhead lining in the lower lobe cargo compartment. Damage to the grill assembly consisted of bent, fractured, and missing sections of tubing; deformed frames; and twisted cross members. Boeing investigated the reported damage and found the blowout vent grills are vulnerable to being damaged during baggage loading and unloading. Damage to the blowout vent grills in the forward and aft lower lobe cargo compartments could lead to latent failure of the decompression panels and pressure equalization valves. This latent failure, in combination with a fire, could make the cargo fire protection, detection, suppression, and containment system ineffective. Also,

this latent failure, in combination with rapid decompression of the airplane, could prevent activation of the station (STA) 1640 decompression panels, which could damage the STA 1640 floor beam and cause loss of hydraulic systems components and flight control. This condition, if not addressed could result in the inability of the flightcrew to maintain safe flight and landing.

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 757–25A0319 RB, dated March 24, 2023. This service information specifies procedures for repetitive detailed inspections of certain bulkhead (including STA 1640), sidewall, ceiling, and E5 EE rack decompression panels, and pressure equalization valves on certain airplanes, in the forward and aft lower lobe cargo compartments for damage; and applicable on-condition actions. On-condition actions include repair or replacement of any damaged decompression panels or pressure equalization valves. For certain airplanes, this service information also specifies procedures for replacing the soft bulkhead at STA 1640 with a rigid bulkhead having decompression panels with billet grilles. For certain other airplanes, this service information specifies procedures for installing doublers to the bulkhead assembly panel at STA 1640.

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. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–2003.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 489 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
Detailed Inspection	Up to 21 work-hours × $85 per hour = $1,785 per inspection cycle.	$0	Up to $1,785 per inspection cycle.	Up to $872,865 per inspection cycle.
Replacement of soft bulkhead (100 airplanes).	10 work-hours × $85 per hour = $850.	108,240	109,090	10,909,000.
Installation of doublers (7 airplanes)	2 work-hours × $85 per hour = $170	1,760	$1,930	13,510.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	12 work-hours × $85 per hour = $1,020	$54,120	$55,140
Replacement	12 work-hour × $85 per hour = $1,020	108,240	109,260

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–2023–2003; Project Identifier AD–2022–01620–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 11, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 24, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports that operators have found, on multiple aircraft, frequent and severe damage to the blowout vent grills of the aft soft bulkhead lining in the lower lobe cargo compartment. The FAA is issuing this AD to address damage to the blowout vent grills in the forward and aft lower lobe cargo compartments that could lead to latent failure of the decompression panels and pressure equalization valves. This latent failure, in combination with a fire, could make the cargo fire protection, detection, suppression, and containment system ineffective. Also, this latent failure, in combination with rapid decompression of the airplane, could prevent activation of the station (STA) 1640 decompression panels, which could damage the STA 1640 floor beam and cause loss of hydraulic systems components and flight control. This unsafe condition, if not addressed, could result in the inability of the flightcrew to maintain safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 24, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 24, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–25A0319, dated March 24, 2023, which is referred to in Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 24, 2023.

(h) Exceptions to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 24, 2023, use the phrase ''the original issue date of Requirements Bulletin 757–25A0319 RB,'' this AD requires replacing those words with ''the effective date of this AD.''

(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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-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.

(j) Related Information

(1) For more information about this AD, contact Katherine Venegas, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 562–627–5353; email: *Katherine.Venegas@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 757–25A0319 RB, dated March 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 material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.*

Issued on October 19, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–23521 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2004; Project Identifier MCAI–2023–00977–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–01–07, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–01–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–01–07, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would retain the actions required by AD 2022–01–07 and also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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 December 11, 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–2023–2004; 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 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–2023–2004.
- 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.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 562–627–5357; email: *dat.v.le@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–2023–2004; Project Identifier MCAI–2023–00977–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 Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 562–627–5357; email: *dat.v.le@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 issued AD 2022–01–07, Amendment 39–21895 (87 FR 5391, February 1, 2022) (AD 2022–01–07), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–01–07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0209, dated September 15, 2021 (EASA AD 2021–0209) (which corresponds to FAA AD 2022–01–07), to correct an unsafe condition.

AD 2022–01–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2022–01–07 to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since AD 2022–01–07 Was Issued

Since the FAA issued AD 2022–01–07, EASA superseded AD 2021–0209 and issued EASA AD 2023–0162, dated August 17, 2023 (EASA AD 2023–0162) (referred to after this as the MCAI), for certain Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 1, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

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–2023–2004.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0162. This service information specifies new or more restrictive airworthiness limitations related to fuel tank ignition prevention and fuel tank flammability reduction.

This proposed AD would also require EASA AD 2021–0209, which the Director of the Federal Register approved for incorporation by reference as of March 8, 2022 (87 FR 5391, February 1, 2022).

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 retain the requirements of AD 2022–01–07. This proposed AD would require revising the existing maintenance or inspection

program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0162 described previously, as incorporated by reference. Any differences with EASA AD 2023–0162 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) 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 2023–0162 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0162 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 2023–0162 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 2023–0162. Service information required by EASA AD 2023–0162 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–2004 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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 2022–01–07, Amendment 39–21895 (87 FR 5391, February 1, 2022); and

■ b. Adding the following new Airworthiness Directive:

Airbus SAS: Docket No. FAA–2023–2004; Project Identifier MCAI–2023–00977–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 11, 2023.

(b) Affected ADs

This AD replaces AD 2022–01–07, Amendment 39–21895 (87 FR 5391, February 1, 2022) (AD 2022–01–07).

(c) Applicability

This AD applies all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 1, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With AD 2022–01–07, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–01–07, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021: 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 2021–0209, dated September 15, 2021 (EASA AD 2021–0209). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0209, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2022–01–07, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0209 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2021–0209 specifies revising ''the AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2021–0209 within 90 days after March 8, 2022 (the effective date of AD 2022–01–07).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0209 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2021–0209, or within 90 days after March 8, 2022 (the effective date of AD 2022–01–07), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0209 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2021–0209 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2022–01–07, with no changes. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and critical design configuration control limitations (CDCCLs) are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0209.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0162, dated August 17, 2023 (EASA AD 2023–0162). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2023–0162

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0162.

(2) Where paragraph (3) of EASA AD 2023–0162 specifies ''Within 12 months after the effective date of this AD, revise the AMP,'' this AD requires replacing those words with ''Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable.''

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0162 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0162, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0162.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0162.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0162.

(m) 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 (n) 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 Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 562–627–5357; email: *dat.v.le@faa.gov.*

(o) 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.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2023–0162, dated August 17, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 8, 2022 (87 FR 5391, February 1, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0209, dated September 15, 2021.

(ii) [Reserved]

(5) For EASA AD 2023–0162 and EASA AD 2021–0209, 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.*

(6) 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.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on October 19, 2023.

Ross Landes,

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

[FR Doc. 2023–23517 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 309

RIN 3084–AB15

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: As part of the Commission's systematic review of all FTC rules and guides, the Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on the overall costs, benefits, necessity, and regulatory and economic impact of its Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Alternative Fuels Rule'' or ''Rule'').

DATES: Comments must be received on or before December 26, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regulatory Review for Alternative Fuels Rule, Matter No. R311002'' on your comment, and file your comment online at *https://www.regulations.gov/,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex F), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202–326–2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

I. Background

The Energy Policy Act of 1992 (''EPAct 92'' or ''Act'') established federal programs to encourage the development of alternative fuels and alternative fueled vehicles (''AFVs''). Section 406(a) of the Act directs the Commission to establish uniform labeling requirements for alternative fuels and AFVs. Under the Act, such labels must provide ''appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.'' The required labels must be ''simple and, where appropriate, consolidated with other labels providing information to the consumer.'' [1]

In response, the Commission published the Alternative Fuels Rule in 1995.[2] The Rule requires labels on fuel dispensers for non-liquid alternative fuels, such as electricity, compressed natural gas, and hydrogen. The labels for electricity provide the charging system's kilowatt capacity, voltage, and other related information. The labels for other non-liquid fuels disclose the fuel's commonly used name and principal component (expressed as a percentage). The Rule also has labeling requirements for new alternative fueled vehicles. However, the Rule does not contain separate label requirements for vehicles and, instead, incorporates the Environmental Protection Agency's (''EPA'') fuel economy label rules (40 CFR part 600).

II. Regulatory Review of the Alternative Fuels Rule

The Commission systematically reviews all its rules and guides to: (1) examine their efficacy, costs, and benefits; and (2) determine whether to retain, modify, or rescind them. The Commission completed its most recent Rule review a decade ago (78 FR 23832 (April 23, 2013)). During that review, the Commission consolidated the Rule's AFV requirements with fuel economy labels required by EPA and eliminated labeling requirements for used AFVs. With this publication, the Commission commences a new review.

As part of this review, the Commission seeks comment on the current Alternative Fuels Rule. Among other things, commenters should address the economic impact of, and the continuing need for the Rule; the Rule's benefits to alternative fuel and AFV purchasers; and burdens the Rule places on firms subject to its requirements. Additionally, the Commission seeks comment on specific issues related to electric vehicle charging stations (Section III.) and responses to other questions about the Rule (Section IV.).

III. Specific Questions About Labeling for Electric Vehicle Charging Stations

Given the proliferation of electric vehicles (''EVs'') in the marketplace, the Commission specifically seeks comment on the Rule's labeling requirements for electric vehicle dispensing systems (*i.e.,* EV charging stations) operated by retailers for consumers. The current Rule requires a label on all such public EV charging stations that discloses: (1) the commonly used name of the fuel (*e.g.,* electricity); (2) the system's kilowatt (''kW'') capacity; (3) voltage; (4) whether the voltage is alternating current (''ac'') or direct current (''dc''); amperage; and (5) whether the system is conductive or inductive (*e.g.,* ''9.6 kW; 240 vac/40 amps; CONDUCTIVE''). Under the current requirements, retailers must place the label conspicuously on the face of each dispenser ''so as to be in full view of consumers and as near as reasonably practical to the price per unit of the non-liquid alternative vehicle fuel.'' [3] The Commission seeks comment on the following questions about the current label for public EV charging stations and any other issue related to the current label. Commenters should provide specific information to support their responses, including examples, where appropriate.

(1) Does the Rule's current label for EV charging stations help consumers make choices and comparisons when they are seeking to charge their vehicles? Can the label be ''consolidated with other labels providing information to the consumer?'' If so, which labels?

(2) Is there any research about how consumers understand or interpret information at EV charging stations, including the FTC label? Is there evidence of consumer confusion related to the use of charging stations in the market now, including the use of the FTC label?

(3) Should the Commission make any changes to the content of the current EV charging station label? If so, what changes should the Commission make? Is there any information on the label that is unnecessary? For example, should the Rule continue to require a disclosure indicating whether the station is conductive or inductive? Is there any other information not covered

[1] 42 U.S.C. 13232(a). The law also states: ''In formulating the rule, the Federal Trade Commission shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors.''

[2] 60 FR 26926 (May 19, 1995).

[3] Section 309.15(b)(1).

by the current label that would be useful to communicate to consumers?

(4) Should the Rule require the disclosure of kilowatt capacity in a different way on the label (*e.g.,* charging level)?

(5) Should the label include information about the station's connectors (*i.e.,* plugs)?

(6) Should the Commission consider a different format for the label? For instance, should the Commission adopt a labeling format consistent with the FTC's Lighting Facts label for light bulbs (16 CFR part 305) or the Food and Drug Administration's ''Nutrition Facts'' label (21 CFR part 101) (*e.g.,* ''Charger Facts'')? Should the label be simpler? For example, should the Rule require conspicuous disclosures limited to kilowatt capacity (or charging level) and connector without a specific label size or format?

(7) Should the Rule specifically allow the label to appear on the charging station's screen? If so, what requirements should the Rule include to ensure the label is visible to consumers using the station?

IV. Other Issues for Comment

The Commission solicits comment on the following questions related to the Rule:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact, if any, has the Rule had on the flow of appropriate information to consumers about alternative fuels?

(5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Please provide any evidence that has become available since the last review concerning consumer perception of non-liquid alternative fuel labeling. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Please provide any evidence that has become available since the last review concerning consumer interest in alternative fuel. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(11) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(13) What evidence is available concerning the degree of industry compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(14) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(15) What modifications, if any, should be made to the Rule to account for changes in relevant technology, including development of new alternative fuels, or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(16) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national uniformity with respect to rating, certifying, and posting the rating of non-liquid alternative fuels? If so, please provide that evidence.

(17) Are there foreign or international laws, regulations, or standards with respect to rating, certifying, and posting the rating of non-liquid alternative fuels that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(18) Are there any specific changes that should be made to the hydrogen label?

(19) Should the Commission revisit its 2013 decision to consolidate FTC labels for AFVs with the fuel economy labels required by EPA? If so, what Rule changes should the Commission consider?

V. Instructions for Submitting Comments

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 26, 2023. Write ''Regulatory Review for Alternative Fuels Rule, Matter No. R311002'' on your comment.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through *www.regulations.gov*. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *www.regulations.gov* website. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the *www.regulations.gov* site.

If you file your comment on paper, write ''Regulatory Review for Alternative Fuels Rule, Matter No. R311002'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex F), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, clearly labeled ''Confidential,'' and comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and identify the specific portions of the comment to be withheld from the public record. *See id.* Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 26, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2023–23621 Filed 10–25–23; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1240

[CPSC Docket No. 0046]

Safety Standard for Infant and Infant/Toddler Rockers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the U.S. Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be substantially the same as applicable voluntary standards, or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for Infant and Infant/Toddler Rockers (rockers). The Commission is also proposing to amend CPSC's consumer registration requirements to add rockers as identified durable infant or toddler products and to amend CPSC's list of notice of requirements (NORs) to include rockers.

DATES: Submit comments by December 26, 2023.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature requirements of the proposed rule should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–0046, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov/.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov/.* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to *https://www.regulations.gov/.* Do not submit through this website: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov/,* and insert the docket number, CPSC–0046, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Zachary S. Foster, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; Telephone 301–987–2034; email: *zfoster@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b) of the CPSIA, 15 U.S.C. 2056a(b), requires the Commission to: (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products in consultation with

representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant or toddler products. Standards issued under section 104 are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standards if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. 15 U.S.C. 2056a(b)(1)(B).

Currently, no mandatory safety standard exists for infant rockers or infant/toddler rockers. There is a voluntary standard, however. In July 2014, ASTM International's (ASTM) Committee F15 on Consumer Products first published a voluntary standard for rockers—ASTM F3084–14, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers* (ASTM F3084), to minimize the risk of injury or death associated with children's use of rockers. The standard addressed hazards associated with product disassembly and collapse, stability, and falls from an elevated surface. Hazard mitigation strategies included performance requirements, warnings, and instructional literature. The ASTM standard has been revised four times since 2014, in 2016, 2018, 2020, and 2022. The most current version of the ASTM standard is ASTM F3084–22, published in May 2022.

Consistent with the consultation requirement in section 104(b)(1) of the CPSIA, CPSC staff has worked with the ASTM F15.18 subcommittee task group since 2013 to update the voluntary standard for rockers.[1] This consultation, including staff's assessment of hazard patterns and suggested additional performance and labeling requirements, continued through publication and revision of ASTM F3084–22.

Section 104(d) of the CPSIA requires manufacturers of durable infant or toddler products to establish a product registration program and comply with CPSC's requirements under 16 CFR part 1130. Any product defined as a ''durable infant or toddler product'' in part 1130 must comply with the product registration requirements, as well as testing and certification requirements for children's products, as codified in 16 CFR parts 1107 and 1109. Section 104(f)(1) of the CPSIA defines a ''durable infant or toddler product'' as a ''durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' 15 U.S.C. 2056a(f)(1). Section 104(f)(2) of the CPSIA includes a list of categories of products that are durable infant or toddler products, including products similar to rockers, such as various infant chairs (highchairs, booster chairs, and hook-on chairs) and swings. 15 U.S.C. 2056a(f)(2).

Rockers are not included in the statutory list of durable infant or toddler products. As set forth in section V of the preamble, the statutory product list is not exhaustive. The Commission now proposes to amend part 1130 to include ''Infant and Infant/Toddler Rockers'' as durable infant or toddler products because they are intended for use, and may be reasonably expected to be used, by children under the age of 5 years; are analogous to other statutory and Commission-defined durable infant products, such as infant bouncers; and are commonly available for resale or ''handed down'' for use by other children.[2]

II. The Product Category

A. Products Within the Scope

The scope of this notice of proposed rulemaking (NPR) includes all infant rockers and all infant/toddler rockers within the scope of ASTM F3084–22, including multi-mode products with a rocker mode, with the addition of weight limits for each product and terminology to define ''rocking'' pursuant to the Commission's proposed modification to the standard definitions addressed below. The ASTM standard F3084–22 defines an infant rocker as a ''freestanding product intended to support an occupant who has not developed the ability to sit up unassisted (approximately 0 to 6 months of age) in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with the aid of the caregiver or by other means.'' The ASTM standard defines an infant/toddler rocker as ''a freestanding product intended to support an occupant in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with the aid of the caregiver or by other means until the occupant is approximately 2½ years.'' The Commission proposes to modify the ASTM definitions of infant rockers and infant/toddler rockers by specifying a weight limit for each product so as to reflect the manufacturers' maximum recommended weight listed in the product warning, and thereby clarifying which forward stability test is required for each product.[3] The Commission also proposes to add terminology to define ''rocking'' as forward and backward motion via a nonstationary base. This clarification is intended to differentiate rockers from other infant and toddler seated products and prevent improper product classification. The Commission invites comments on the proposed definition of ''rocking.''[4]

Products within scope of the NPR include:

- Infant rockers, marketed for infants up to approximately six months old,
- Infant/toddler rockers, marketed for children up to approximately 2.5 years old,
- Combination rocker/bouncers (bouncers with curved rocker legs),
- Combination swings/rockers (rockers that attach to a stationary swing base), and
- Other combination products, such as rocker/bouncer/stationary chair products.

Most rockers have a metal or plastic frame with a padded fabric seat. A few products, primarily from foreign direct shippers and hand crafters, have a wooden frame. Some products have a motorized rocking function, a vibration function, or sound functions, which are powered by batteries or an electrical cord with a plug. All rockers support a child in an inclined position (greater than 10 degrees from vertical) with certain infant/toddler rockers having adjustable seat backs to facilitate upright sitting as the child grows. Many products also feature an accessory bar with attached toys that are, or once the child has grown larger will be, within the child's reach. Certain products also have secondary use modes. For example, some products have a kickstand that can be deployed to keep the product stationary, while other products can be converted into a bouncer or swing. Many rockers have three-point crotch restraints consisting of a wide cloth crotch and short adjustable waist straps with plastic

[1] Referred to together as ''rockers.'' Reference to ''Infant Rockers'' alone refers to products intended for use by infants up to approximately six months of age. Reference to ''Infant/Toddler Rockers'' alone refers to products intended for use by children up to approximately 2.5 years of age. See section II of the preamble for the full definitions of Infant Rockers and Infant/Toddler Rockers.

[2] In a Commission meeting on October 11, 2023, the Commission voted (4–0) to publish this proposed rule as amended by the Commission. Meeting minutes describing the vote and the amendments are available at: *https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-Infant-Rockers-NPR-and-Gas-Furnaces-and-Boilers-NPR.pdf?VersionId=8Ct.NBI7RhSXyozTJBE65q3lCSyU_aMl.*

[3] See Tab F of Staff's NPR Briefing Package for additional information on the scope of ASTM F3084–22, and Tab G of Staff's NPR Briefing Package for the proposed changes to the definition and stability test.

[4] See Briefing Memo and Tab G of Staff's NPR Briefing Package for the proposed addition.

buckles. Some infant/toddler rockers also utilize a shoulder restraint.

Some items marketed as ''rockers'' are subject to the swing mandatory standard, 16 CFR part 1223, rather than the rocker standard, based on how the product moves in relation to a base or stand. Rockers are reclined seated products that move in their entirety, most commonly on curved legs, so as to rock an occupant forward and backward, while swings have a stationary base. Multi-mode items, such as rockers with curved legs that attach to a swing base, are subject to both the swing mandatory standard and the rocker voluntary standard. Some conventional bouncer seats are advertised as ''rockers'' because they rock up and down, but those products would not meet the definition of a ''rocker'' in either the ASTM standard or the NPR if the base is stationary. Bouncer seats must meet the bouncer seat mandatory standard in 16 CFR part 1229, while multi-mode items that are both rockers and bouncers are subject to both standards.

Rocking horse toys and similar items are out of scope for this rule because they do not meet the definition of a ''rocker'' in the ASTM standard or the NPR; such toys do not support the occupant in a seated, reclined position. Similarly, traditional children's rocking chairs with a straight, non-reclining back are not within the scope of the rule.

B. Market Description

CPSC staff estimates that rocker sales reach 567,500 units per year, although this estimate is uncertain due to the industry practice of grouping rockers and combination products with non-rocker products into a single survey category. In January 2023, staff found that 25 percent of the bestselling products within the ''infant bouncers and rockers'' category of a major internet retailer website were rockers or combination rocker/bouncer products within scope of this proposed rule. *See* Tab F of Staff Briefing Package: Draft Notice of Proposed Rulemaking for Infant and Infant/Toddler Rockers (Sept. 13, 2023) (Staff's NPR Briefing Package), available at: *https://www.cpsc.gov/s3fs-public/Notice-of-Proposed-Rulemaking-Safety-Standard-for-Infant-Rockers-and-Infant-and-Toddler-Rockers.pdf?VersionId=Z3cL72KKD_oN_BG5LcNEAdlDIDXyTrmt*.

While new rockers are available from online general retail sites, brick and mortar baby specialty stores, and brick and mortar general retail stores including ''big box'' stores, used items are widely available on second-hand online sites, as well as in some thrift stores. Rockers range in price from $35 to $250 with an average price of about $110. The less expensive products tend to be smaller products without powered functions, while the more expensive rockers tend to be combination products (*e.g.,* rocker-swings or rocker-bouncers) or products with additional features. Using the estimate of approximately 567,500 units sold each year with the average price of $110, CPSC estimates a $62 million market in terms of annual sales. Approximately 80 models of rockers are available for sale on the U.S. market, from roughly 50 entities.

III. Incident Data

Rockers are part of a broader group of products (which includes bouncers and swings) that provide support to infants who are initially unable to sit independently. Compared to other postures, sitting can provide infants an improved ability to explore objects with greater visual access to their environment, as well as increased social attention. While infants are sitting, as compared to other postures, caregivers also demonstrate a wider variety of interactions that allow infants to practice cognitive skills.[5]

However, incident data confirms that some caregivers use rockers for brief or extended infant or toddler sleep, despite warnings that these products should not be used for sleep. As Tab A of Staff's NPR Briefing Package explains in greater detail, CPSC staff searched the Consumer Product Safety Risk Management System (CPSRMS)[6] and the National Electronic Injury Surveillance System (NEISS)[7] for fatalities, incidents, and concerns associated with rockers reported to have occurred between January 1, 2011 and November 7, 2022. Staff identified 1,088 incidents from CPSRMS associated with rockers. Staff found too few emergency department-treated injuries associated with rockers to derive reportable national estimates. Therefore, staff was unable to provide injury estimates based on NEISS data but included NEISS injury cases in the total count of reported incidents.

Table 1 shows the number of incidents reported for each year during the period. Incident reporting is ongoing and the number of incidents—particularly for recent years—may change.

TABLE 1—REPORTED INFANT ROCKER INCIDENTS

Incident year	Total number of reported incidents	Number of reported fatalities	Number of reported nonfatal injuries
2011	164	1	29
2012	200	1	23
2013	158	1	11
2014	97	1	3
2015	82	1	3
2016	137	0	4
2017	86	1	5
2018	67	0	2
2019	42	2	4

[5] *See* Tab D of Staff's NPR Briefing Package for additional information.

[6] CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, ''external cause''-based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. Examples of documents in CPSRMS are: hotline reports, internet reports, news reports, medical examiner's reports, death certificates, retailer/manufacturer reports, and documents sent by state/local authorities, among others.

[7] NEISS is a statistically valid surveillance system for collecting injury data. NEISS is based on a nationally representative probability sample of hospitals in the U.S. and its territories. Each participating NEISS hospital reports patient information for every emergency department visit associated with a consumer product or a poisoning to a child younger than five years of age. The total number of product-related hospital emergency department visits nationwide can be estimated from the sample of cases reported in the NEISS. *https://www.cpsc.gov/Research—Statistics/NEISS-Injury-Data*.

TABLE 1—REPORTED INFANT ROCKER INCIDENTS—Continued

Incident year	Total number of reported incidents	Number of reported fatalities	Number of reported nonfatal injuries
2020	42	1	3
2021 *	8	1	1
2022 *	6	1	0
Total	1,088	11	88

Source: CPSC epidemiological databases CPSRMS and NEISS.
Note: * Indicates data collection is ongoing.

Table 2 provides age information for the victims in the 1,088 incidents.

TABLE 2—AGE DISTRIBUTION IN INFANT ROCKER-RELATED INCIDENT REPORTS

[01/01/11–11/07/22]

Age	Total	
	Frequency	Percentage
Unreported *	316	29
0–6 Months	418	38
7 Months–Less Than 1 Year	241	22
1–Less Than 2 Years	81	8
2–4 Years	27	2
5 Years or Older	5	<1
Total	1,088	100

Source: CPSC epidemiological databases CPSRMS and NEISS.
Note: Percentages may not sum to 100 due to rounding.
* In this table, age ''unreported'' implies age was unknown or age was not reported because the incident involved no injury.

Table 3 presents the age distribution of children under five years of age who suffered fatal or nonfatal injuries in the incidents from January 1, 2011 to November 7, 2022. All 11 fatalities and 70 nonfatal injuries involved victims less than one year old. Eight incidents involved victims less than four months old, including five of the 11 total fatalities.

TABLE 3—AGE DISTRIBUTION IN INFANT ROCKER-RELATED INCIDENTS REPORTING FATALITIES AND NONFATAL INJURIES AMONG CHILDREN UNDER FIVE YEARS OF AGE

[01/01/11–11/07/22]

Age of child	Total		Fatalities		Injuries	
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Unreported *	12	12	0	0	12	14
0–6 Months	33	33	10	91	23	26
7–Less Than 1 Year	48	48	1	9	47	53
1–Less Than 2 Years	5	5	0	0	5	6
2–4 Years	1	1	0	0	1	1
Total	99	100	11	100	88	100

Source: CPSC epidemiological databases CPSRMS and NEISS.
Note: Percentages may not sum to 100 due to rounding.
* In this table, age ''unreported'' implies age was unknown but victim is described as a child under five years of age.

Of the 11 fatalities during the period, nine involved infants being placed in the rocker for sleeping or napping. The incident reports indicate that in two of these incidents the infants were placed on their side in the rocker, and in one incident the rocker was damaged and was being supported by a shoe box. One fatality involved an infant being placed in a rocker with the seat back in the ''upright/toddler'' position for approximately four hours. One fatality involved an infant being placed in a rocker on top of an adult bed without a caregiver present for approximately 20–30 minutes. Six of the 11 fatalities indicate that the restraints were not used. Six of the 11 fatalities indicate that pillows and/or blankets were placed in the product with the infant over the infant for warmth/comfort, under the infant for comfort/support, or both. In one of these incidents a blanket was found covering the infant's face.

Summaries of the fatalities are provided in Tab A of Staff's NPR Briefing Package.

Staff identified hazard patterns for all 1,088 reported incidents associated with rockers.

More than 700 of the incidents (64 percent) involved hardware-related problems such as issues related to lock and latch hardware, hinge hardware, seat mounting hardware, or other parts breaking.

Two hundred and seventy-five of the incidents (25 percent) cited rockers wobbling, collapsing, or tipping over. Tipover-related incidents comprised more than 64 percent of all reported injuries. At least 49 of the tipover-related incidents involved a rocker tipping forward. Sixty of the 275 stability-related incidents resulted in head injury. Four of the 275 stability-related incidents resulted in other upper body injuries.

Thirty-seven of the incidents (3 percent) cited rockers having electrical issues, mostly batteries leaking. Thirty-six of the incidents (3 percent), involving 17 injuries, cited issues related to the rocker's design, such as toy bar positioning, slippery fabric seat pads, misaligned screws, pinch points, defective battery compartments, and seat back tubes not staying in sockets.

From January 1, 2011 through August 30, 2023, CPSC issued one recall of two multi-mode products in which four fatalities were reported and one issued warning regarding rockers. Incidents described in the press releases for the multi-mode product recall and the warning involved infants being placed to sleep on their backs and unrestrained in inclined rocking products but found on their stomachs.[8]

IV. Overview of ASTM F3084[9]

A. History of ASTM F3084

The ASTM F15.18 Subcommittee on Cribs, Toddler Beds, Play Yards, Bassinets, Cradles, and Changing Tables first published the voluntary standard for rockers in 2014, as ASTM F3084–14, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers.*[10] The first publication addressed issues including seat angles, stability, structural integrity, other design issues, and marking and labeling.

Since 2014, ASTM has revised and updated the voluntary standard four times to address safety issues. In 2016, ASTM modified the warning requirements for use of shoulder straps provided as part of the restraint system. In 2018, ASTM made miscellaneous changes. In 2020, ASTM added language to the marking, labeling, and instructional literature requirement that addressed battery operated products and removed references to the CPSIA. In May 2022, ASTM modified warning language to state that rockers are not intended for sleep or unsupervised use, and to instruct consumers to move sleeping infants to a firm, flat sleep surface.[11]

B. Assessment of the ASTM F3084–22 Standard

Based on CPSC staff's Engineering and Human Factors assessments, Tabs C and D of Staff's NPR Briefing Package, respectively, CPSC concludes that several ASTM F3084–22 tests are adequate to address rocker hazards, specifically: (1) the sideward and rearward stability tests for infant and infant/toddler rockers to address product sideward and rearward tipover; (2) the structural integrity test to address hardware failures and collapse hazard; (3) the toy bar integrity test to address toy bars snapping apart; and (4) the restraint system test to ensure the heaviest intended occupant is safely secure. Therefore, the Commission proposes in the NPR to adopt the following ASTM tests:[12]

1. Sideward and Rearward Stability

Section 6.3.2 of ASTM F3084–22 specifies performance requirements for rockers' sideward and rearward stability. In the test procedure, a CAMI Infant Dummy is placed in the rocker, which is then positioned in the most unfavorable sideward or rear position on a test surface inclined at 20 degrees. To pass the test, the rocker must not tip over in this position. CPSC testing indicates this test is adequate to address the risk to occupants from sideways or backwards tip-over of the rocker.

2. Structural Integrity

The ASTM standard includes a dynamic load test (see section 7.6.1), a static load test (see section 7.6.2), and a disassembly/collapse test (see section 6.6). Section 6.5 specifies that rockers shall not break or create a hazardous condition after these tests are applied. CPSC assess that these tests adequately test the structural strength of rockers.

3. Toy Bars

To prevent caregivers from attempting to raise the rocker by the toy bar, section 6.7 of ASTM F3084–22 requires that toy bars must either be strong enough to not detach when used as a handle or must break free from the rocker when a caregiver attempts to use the toy bar as a handle. CPSC considers these requirements—which are identical to the ASTM F2167–22 toy bar attachment test requirements for infant bouncers, codified in 16 CFR part 1229—adequate to address the hazard of toy bars snapping due to use as a handle.

4. Restraints

Section 6.2 of ASTM F3084–22 requires both a waist and crotch restraint to secure a child in a rocker. The test requires that the restraint system anchors shall not separate from the attachment points when subjected to a force of 45 lb. that is maintained for 10 seconds. The force of 45 lb. is approximately 25 percent greater than the 36 lb. weight of a 2.5-year-old male child in the 95th percentile. These requirements are identical to the restraint system test requirements for infant bouncers under 16 CFR part 1229, and adequately ensure the safety of the heaviest intended occupant.

5. Concavity and Firmness

While the foregoing tests in ASTM F3084–22 appear adequate to address rocker hazards, CPSC finds, subject to public comment, that several revisions to the current voluntary standard are necessary to adequately address hazards to infants and toddlers associated with rockers.

First, no provision in ASTM F3084–22 addresses the risk of suffocation in rockers due to concavity or firmness issues. In 2022, CPSC contracted with Boise State University (BSU) to research and analyze the death or injury risks associated with infant seated products and to recommend possible requirements to improve safety. A research team led by Dr. Erin Mannen submitted their report (BSU Report) to CPSC in June 2023. The BSU Report recommends that infant seated products should have a firmness similar to that of a crib mattress, should not envelop the infant's head or face, and should provide sufficient space for the infant's head to rotate without contacting the product side walls.[13]

[8] *See* Tab E of Staff's NPR Briefing Package for additional information.

[9] *See* Tab C of Staff's NPR Briefing Package for additional information.

[10] The Commission is not aware of any international voluntary standards pertaining to rockers.

[11] *See* Briefing Memo of Staff's NPR Briefing Package for additional detail on ASTM F3084.

[12] *See* Tabs C and D of Staff NPR Briefing Package for additional details.

[13] Mannen, E.M., Siegel, D., Goldrod, S., Bossart, A., Lujan, T.J., Wilson, C., Whitaker, B., Carrol, J. (2023). *Seated Products Characterization and Testing.* Report available at *https://www.cpsc.gov/content/Report-Boise-State-Universitys-Seated-*

Continued

(a) Concavity and Conformity

The BSU Report states that the concavity (*i.e.,* curvature of the seat back) and conformity (*i.e.,* the product enveloping the infant due to the infant's weight) of an infant rocker can affect the risk of mouth and nose contact with the sides of the product and poses a suffocation risk. The BSU research team found that rockers with a small pillow or no pillow posed a low risk for suffocation from nose and mouth contact, while products with larger and thicker pillows or inserts were deemed to create a high risk for mouth and nose contact and potential suffocation.

The BSU Report outlines a recommended concavity test. The test consists of calculating the concavity (radius) formed at the intended occupant's head position with a 7.65-pound newborn-sized test device in the seat. With the device in place, the width of the seat is then measured from side to side at the intended infant head position. The depth is also measured from the midline of the infant's head position to the seat back surface. With these measurements, the radius is then calculated to determine the concavity.

The BSU Report states that a seated product with a concavity radius greater than 22 cm (8.66 in.) would protect against mouth and nose contact with sides of the products during a normal head rotation. Therefore, the BSU Report recommends a concavity radius equal to or greater than 22 cm (8.66 in.), which would make it easier for infants to free their mouth and nose from face contact if they roll into a prone position within the product. After conducting testing, CPSC staff similarly found that a concavity radius of less than 22 cm (8.66 in) would increase the risk of an infant's mouth or nose coming into contact with the side of a product. The 22 cm (8.66 in) radius is three times the head radius of a 95th percentile six-month-old male. The minimum 22 cm (8.66 in) radius requirement therefore incorporates a three times safety factor to prevent the infant's face from contacting the side of the rocker. The Commission invites comment on the proposed concavity requirement to address the suffocation hazard by adopting the BSU Report's recommended concavity test for rockers.

(b) Firmness

The BSU Report states that all seated infant products should be sufficiently firm and flat to prevent the infant's mouth and nose from making contact with the product during supine lying with a normal head rotation. The BSU Report recommends that infant rocker firmness should be equivalent to the crib mattress firmness requirement, confirming that the minimum displacement of 11mm (0.43 in) with a 2.25-pound load would meet the crib mattress firmness requirement. Based on staff's own testing as well as the BSU Report, CPSC staff advises that adopting the BSU Report firmness test for rockers would address a suffocation risk. Staff further found that inserting a foam backing between the fabric of the rocker and the frame would allow the rocker to pass the firmness test, suggesting the feasibility of complying with the BSU Report's firmness recommendation. *See* Tab C of Staff's NPR Briefing Package for more detail.

The firmness requirement and test method recommended in the BSU Report addresses the hazards of soft surfaces designed into rockers, such as pillows or hammock designs, that can envelope an infant's face in the prone position or with the head turned to the side position. Providing equivalent firmness around the occupant's head will help to ensure that rockers have the same baseline safety as crib mattresses in terms of preventing a child's nose and mouth from being obstructed by the support surface. The Commission proposes to adopt the BSU Report's recommended firmness test to strengthen the rockers standard to address a suffocation hazard that ASTM F3084–22 currently does not address and invites comment on this proposal.

6. Forward Stability

Section 6.3 of ASTM F3084–22 specifies performance requirements for forward stability in infant rockers intended to support an occupant who has not developed the ability to sit up unassisted. The test procedure for forward stability applies a tipping moment to the product in its most upright position to simulate a 21 lb. infant leaning forward in the rocker.[14] A test fixture is then attached to the seat of a product with restraints that have been adjusted for a CAMI Infant Dummy. A 21-lb. vertical static force is applied for 60 seconds to the fixture five inches in front of the crotch post. To pass the test, the infant rocker must not tip over. *See* Tab A, Appendix, and Tab C of Staff NPR Briefing Package for additional details.

This forward stability requirement for infant rockers is not as stringent as the forward stability requirements for infant bouncers in 16 CFR part 1229, which provides greater protection for larger infants by applying the test weight one inch further from the crotch post (*i.e.,* six inches away instead of five inches away) and using the manufacturer's maximum recommended weight if greater than the 21-lb. weight application specified. Additionally, the infant rocker standard does not clearly specify a maximum weight limit for infant rockers in the product warnings and does not adequately indicate which forward stability tests are to be applied to each product type, whether it be an infant rocker or an infant/toddler rocker. To strengthen the standard, the Commission proposes modifying the forward stability requirement for infant rockers to match the more stringent test conditions specified in the mandatory standard for infant bouncers, revising the definitions for ''infant rocker'' and ''infant/toddler rocker'' to list a maximum weight limit, and revising the forward stability tests to offer additional clarification on which tests apply to which product category.

In addition, it appears the forward stability test for infant/toddler rockers in ASTM F3084–22 does not adequately address occupants larger than six-months-old, as most of the incidents of infant/toddler rockers tipping over involved an occupant that ranged from seven months to 12 months of age. *See* Tab C of Staff NPR Briefing Package. The Commission requests comments on this concern, and on methods to best test forward stability hazards for occupants older than six months of age.

7. Electrical—Battery Leakage

As noted, 36 of the 1,088 reported rocker incidents within the study period involved leaking batteries. Twelve of the leaking battery incidents reported corroded or rusty battery compartments. *See* Tab A, Appendix, and Tab C of Staff's NPR Briefing Package for additional information.

ASTM F3084–22 does not specify requirements to address battery or electrical issues associated with rockers. CPSC's bouncer rule, codified at 16 CFR part 1229, does include requirements to address such electrical hazards. Specifically, the bouncer rule's electrical requirements include: (1) each battery compartment or area around the battery compartment is marked to show the correct battery polarity, size, and voltage; (2) each battery compartment provides a means to contain battery leaks; (3) design protection from the possibility of a battery being charged when it is installed in the rocker; (4) the surfaces of any accessible electrical

Products-Characterization-and-Testing (BSU Report).

[14] The 21-lb load is equivalent to the weight of a 95th percentile 6-month-old boy (Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States, 2000. *https://www.cdc.gov/growthcharts/*).

component do not reach temperatures exceeding 160 °F (71°C) at any time while in ordinary use; and (5) the product is only operable via an a/c power source and/or new batteries of the type recommended by the manufacturer. To address the battery-related hazards reflected in the reported incidents, the Commission proposes to add electrical requirements based on requirements in the bouncer rule.

8. Drop Test

The bouncer rule in 16 CFR part 1229 includes a drop test to evaluate the durability of infant bouncers in instances of an inadvertent drop or the product impacting a hard surface. The test drops a bouncer from a height of 36 inches once on each of six different planes (top, bottom, front, rear, left side, and right side). ASTM F3084–22 does not contain a similar test, which reduces the protectiveness of its requirements. *See* Tab C of Staff's NPR Briefing Package. Accordingly, the Commission proposes to apply the drop test from the bouncer rule to rockers to ensure product durability.

9. Strangulation on Tethered Straps

CPSC staff identified one near-strangulation incident involving a rocker in which an eight-month-old male crawled under the product, at which time his neck became entangled in the tethered straps located behind the rocker. *See* Tab A, Appendix, and Tab C of Staff's NPR Briefing Package for additional information. Because ASTM F3084–22 does not address a tethered strap strangulation hazard, the Commission proposes to strengthen the rocker standard by adding a test in section 7.11 of the NPR to address tethered strap strangulation hazards.

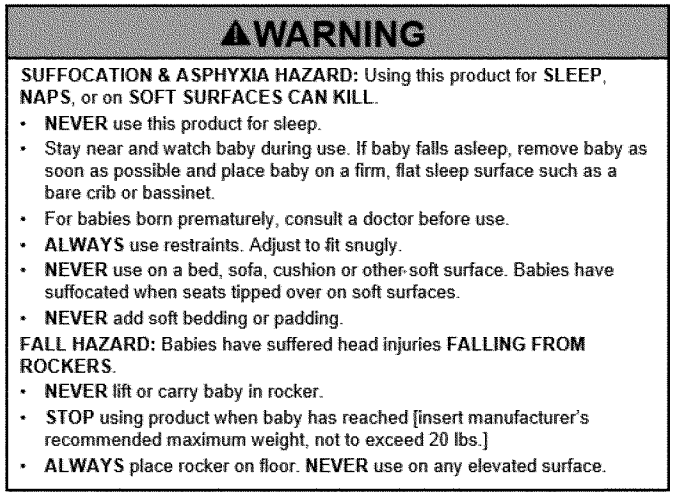
C. Marking, Warning, and Labeling

Warning about a hazard is a less effective method of addressing the hazard than either designing the hazard out of a product or guarding consumers from the hazard. Therefore, when a standard relies on warnings to address a hazard, it is particularly important that the warning statements are noticeable, understandable, and motivational. The primary U.S. voluntary consensus standard for product safety signs and labels, ANSI Z535.4, *American National Standard for Product Safety Signs and Labels,* recommends that on-product warnings include content that addresses the following three elements:

- a description of the hazard;
- information about the consequences of exposure to the hazard; and
- instructions regarding appropriate hazard-avoidance behaviors.

CPSC staff analyzed literature, incident data, and consumer feedback, concluding that the rocker warnings specified in ASTM F3084–22 do not adequately address the identified product hazards because the warning requirements insufficiently address the use of soft bedding in rockers and the use of rockers for sleep, fail to address potential hazards of prematurely born infants using rockers, do not sufficiently outline label visibility and location requirements, and have typographical errors. *See* Tab D of Staff's NPR Briefing Package. To address these deficiencies, the Commission proposes inclusion of the warnings shown in Figure 1:

Figure 1. Example warning label.



D. Instructional Literature

Adding these warnings to the product literature is also necessary to address adequately the hazards associated with rockers. *See* Tab D of Staff's NPR Briefing Package. Further, the instructional literature language in the ASTM voluntary standard overbroadly states that instructions shall include the warnings listed in section 8.7, which contains four sets of warning statements with minor differences based on whether the product is an infant rocker or an infant/toddler rocker, and the type of restraint system used. The Commission proposes that the instructional literature requirements specify that only the applicable warning in section 8.7 needs to be included.

V. Overview of the NPR

A. Performance Requirements

In light of the substantial record of deaths and injuries with infant rockers and infant/toddler rockers, as summarized in section III above, the Commission issues the NPR under section 104 of the CPSIA to propose a mandatory consumer product safety standard for rockers. The Commission proposes to incorporate by reference ASTM F3084–22, with modifications to make the standard more stringent to further reduce the risk of injury associated with the use of rockers. The objective of this proposed rule is to address the known hazards of infant rockers and infant/toddler rockers, which include positional asphyxia, disassembly and collapse, hardware failures such as screws coming out and parts breaking off, and falls from elevated surfaces. The NPR contains more stringent performance and labeling requirements than the voluntary standard, improving the test

requirements based on CPSC's assessment of incident reports, performance tests from the bouncer rule in 16 CFR part 1229, and the BSU Report. Additionally, the NPR includes requirements for warning content and formatting. Proposed modifications to ASTM F3084–22 in the NPR address:

Suffocation risks posed by soft rocker surfaces and rocker features that can envelop a child's face, by adding firmness and concavity requirements as recommended in the BSU Report discussed in section IV of the preamble; [15]

Tipover risk, by modifying the terminology and forward stability requirements for rockers to match the more stringent test conditions listed in ASTM F2167–22, incorporated by reference into CPSC's *Safety Standard for Infant Bouncer Seats,* codified in 16 CFR part 1229, and to more clearly indicate which forward stability tests are to be performed on each product type, *i.e.,* the different testing for an infant rocker versus an infant/toddler rocker;

Battery leakage risk, by adding the more stringent electrical requirements from part 1229, including performance requirements and test methods requiring battery compartments to provide a means of containing battery leakage, preventing access to contained leakage, avoiding hazardous charging of batteries when installed in the product, and limiting the surface temperature of accessible electrical components to 160 °F (71°C) or less at any time while in ordinary use;

Strangulation risk posed by tethered straps that are exposed below a product, by adding tethered straps accessibility requirements;

Mechanical injury risks associated with product design, by adding drop test requirements from part 1229 to ensure product durability;

Warning and literature requirements to emphasize that rockers are not intended for sleep and that soft bedding is not to be used in rockers, and to ensure that on-product labels are prominently placed and conspicuous to the consumer.

B. Certification

Section 14 of the CPSA establishes requirements for product certification and testing. Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for the accreditation of third-party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. 15 U.S.C. 2063(a)(3). The proposed rule for 16 CFR part 1240, *Safety Standard for Infant and Infant/Toddler Rockers,* if issued as a final rule, would be a children's product safety rule that requires the issuance of an NOR.

16 CFR part 1112 establishes requirements for accreditation of third-party conformity assessment bodies to test for conformity with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies all of the NORs issued previously by the Commission. To meet the requirement that the Commission issue an NOR for the rocker standard, the Commission proposes as part of the NPR to add rockers to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for rockers would be required to meet the third-party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to have 16 CFR part 1240, *Safety Standard for Infant and Infant/Toddler Rockers,* included within the laboratory's scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: *https://www.cpsc.gov/cgi-bin/labsearch/.*

C. Product Registration

In addition to requiring the Commission to issue safety standards for durable infant or toddler products, section 104 of the CPSIA directs the Commission to issue a rule requiring that manufacturers of durable infant or toddler products establish a program for consumer registration of those products. 15 U.S.C. 2056a(d).

Section 104(f) of the CPSIA defines the term ''durable infant or toddler product'' as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,'' and lists 12 product categories. 15 U.S.C. 2056a(f). The product categories listed in section 104(f)(2) of the CPSIA—which do not include rockers—represent a non-exhaustive list of durable infant or toddler product categories. 74 FR 68668, 68669 (Dec. 29, 2009).

As the CPSIA directs, CPSC's consumer registration rule at 16 CFR part 1130 requires each manufacturer of a durable infant or toddler product to provide a postage-paid consumer registration form with each product; keep records of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and certain other identifying information on the product. The Commission here proposes to amend part 1130 to include ''Infant and Infant/Toddler Rockers,'' as defined in ASTM F3084–22 with modifications, as durable infant or toddler products because they are: (1) intended for use, and may be reasonably expected to be used, by children under the age of 5 years; (2) similar to the other seated products listed in section 104(f)(2) of the CPSIA, such as swings, booster chairs, and activity centers; and (3) durable, as reflected by the fact that they are commonly available for resale or ''handed down'' for use by other children.

VI. Incorporation by Reference

The Commission proposes incorporating ASTM F3084–22 by reference, with modifications to further reduce the risk of injury associated with rockers. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a proposed rule, agencies must discuss in the preamble of the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons or how the agency worked to make the materials reasonably available. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section IV.B of the preamble summarizes the provisions of ASTM F3084–22 that the Commission proposes to incorporate by reference. ASTM F3084–22 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period of the NPR, at: *https://www.astm.org/cpsc.htm.* To download or print the standard, interested persons may purchase a copy

[15] Mannen, E.M., Siegel, D., Goldrod, S., Bossart, A., Lujan, T.J., Wilson, C., Whitaker, B., Carrol, J. (2023). *Seated Products Characterization and Testing.* Report available at *https://www.cpsc.gov/content/Report-Boise-State-Universitys-Seated-Products-Characterization-and-Testing.* (BSU Report).

of ASTM F3084–22 from ASTM, through its website (*https://www.astm.org*), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428. Alternatively, interested parties may inspect a copy of the standard at CPSC's Office of the Secretary by contacting Alberta E. Mills, Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

VII. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes a 180-day effective date for this rule. The rule would apply to all rockers manufactured after the effective date. 15 U.S.C. 2058(g)(1). This amount of time is typical for other CPSIA section 104 rules.[16] Six months is also the period that the Juvenile Products Manufacturers Association (JPMA) typically allows for products in their certification program to shift to a new standard once that new standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this timeframe. Given that the proposed rule largely uses test equipment that is already utilized to test rockers to ASTM F3084–22 for JPMA's program, and that any additional required test equipment is either already utilized for other regulated products (such as infant bouncer seats) or can easily be procured or produced by a testing laboratory, the Commission believes that additional time is unnecessary for the production or procurement of new test equipment. The Commission invites comments, particularly from small businesses, regarding the amount of time needed to come into compliance with a final rule.

VIII. Regulatory Flexibility Act (RFA)

The RFA requires that agencies review a proposed rule for its potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make the analysis available to the public for comment when the agency publishes an NPR. 5 U.S.C. 603. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. CPSC staff has addressed these issues in Tab F of Staff's NPR Briefing Package, and they are presented briefly below.

A. Agency Action, NPR Objectives, Product Description, and Market Description

Section I of the preamble explains why CPSC is considering issuing a mandatory rule for rockers and provides a statement of the objectives of, and legal basis for, the proposed rule. Section II of the preamble describes the types of products within the scope of the NPR, the market for rockers, and the use of rockers in the U.S.

The requirements in the NPR are more stringent than the ASTM voluntary standard for rockers. Relatively few rockers for sale in the U.S. are marketed as ASTM-compliant. Only two out of approximately 50 current suppliers to the U.S. market are members of the JPMA certification testing program for rockers, which provides third party testing for compliance with CPSC and ASTM standards. JPMA currently has four member companies that are certified specifically for rockers, two of which do not currently have a rocker for sale in the U.S. *See* Tab F of Staff's NPR Briefing Package.

B. Small Entities to Which the NPR Would Apply

Of the 13 U.S. manufacturers and importers of rockers that currently supply the U.S. market, four are small U.S. manufacturers and five are small U.S. importers based on Small Business Administration (SBA) size standards, for a total of nine small U.S. entities to which the NPR would apply. The rest of the suppliers, about 37, are foreign-based manufacturers and direct shippers.

The NPR would not mandate any requirements or have direct economic impact on retailers of any size because products manufactured or imported before the effective date of the final rule could still be sold. Indirect impacts on retailers could occur in the longer term if rockers are removed from the market rather than redesigned to meet the requirements of this standard, or if an increased price of compliant rockers reduces demand.

C. Impact of the Proposed Rule on Small Manufacturers and Importers

The NPR could have a significant impact on nine small U.S. importers and manufacturers whose products may not be consistent with the NPR requirements. CPSC considers one percent of annual revenue from sales to be a potentially ''significant'' economic impact.

Most rocker products on the market would require redesign to meet the proposed rule and would need new labeling. The extent of the required modifications would depend on whether the products already meet the ASTM standard for rockers or, for multi-mode products, the similar mandatory standards for bouncer chairs or swings. Manufacturers whose products do not meet the performance requirements in the NPR will need to redesign the products at a cost that CPSC staff estimates to be approximately $80,000 per model or remove the products from the market.

Staff anticipates that most models would require at least some redesign to meet the requirements of the standard. However, some redesigns could be relatively inexpensive, such as changing the seat angle or modifying the restraints. Products that currently meet all physical performance requirements might only need the new warning sticker or a stamped-on label. Combination products that are compliant with the mandatory bouncer chair standard or the swing standard and have no hanging restraint straps may require minimal redesign or none at all.

Staff estimates the total cost of redesign for the 17 models supplied by U.S. small businesses to be $1.36 million (17 models × $80,000), though the cost could be less if some models do not require redesign, or only modest redesign. The cost of redesign could also be spread across multiple models because models from the same manufacturer can be similar in structural design and dimensions with different fabrics or toy bars. Similarly, one model from a foreign manufacturer may be sold by multiple direct shippers and small importers under different brand names. The ongoing cost of compliance after the first year that the rule is in effect is expected to be minimal for materials and labor because the redesigned products would likely use the same types of materials and production methods as current products.

Substitutes for rockers are available, so if the costs of compliance were to raise the price of rockers above the price of what parents perceive as reasonable substitutes, such as swings or bouncer seats, there could be a decline in rocker sales as a result of this rule. However, the impact on suppliers of reduced rocker sales could be offset by an increase in sales of these competing products if sold by the same companies.

[16] *See, e.g.,* Safety Standard for Infant Swings, 87 FR 44,307 (July 26, 2022); Safety Standard for Crib Mattresses, 87 FR 8640 (Feb. 15, 2022).

The impact of the redesign cost could also be reduced if suppliers are able to increase the retail price to cover some or all of the cost without significantly impacting overall demand for rockers.

Based on staff's analysis, additional testing costs beyond what suppliers are already spending to comply with other CPSC standards would be less than $1,000 per year per model. Testing costs would likely vary depending on where the testing takes place and whether volume discounts apply. If products are sold to a global market, those products would require testing to satisfy both U.S. and foreign standards at the same time, for a bundled test price. Multi-mode products that are already required to demonstrate compliance with the bouncer or swing mandatory standard through third-party testing may experience a smaller incremental cost for testing only the rocker mode. Overall, staff estimates the testing costs for the industry as a whole, including foreign and large businesses supplying the U.S. market, to be $80,000 per year (80 models × $1,000 per model for testing).

D. Impact on Testing Labs

No adverse impact on testing laboratories should occur as a result of a final rule for rockers. CPSC estimates the required testing instruments and devices to cost in the range of $500 to $1,000. The cost will be on the lower end of this range if the laboratory already has devices such as force gauges, which are common. The 22 labs that are currently accredited to test to the mandatory bouncer standard would likely easily meet the accreditation requirements to test rockers given the similarity of the requirements and test methods. Furthermore, most laboratories are not small businesses. Companies in the lab testing industry include companies with hundreds of locations, including Asia and Europe, and thousands of employees.

E. Alternatives Considered To Reduce the Impact on Small Entities

The Commission considered several alternatives to reduce burden on small entities. Exempting small entities from this rule or parts of this rule would not be consistent with the applicable statutes; the CPSA allows CPSC to provide ''small batch'' exemptions to testing requirements or alternative requirements for some mandatory safety standards, such as the standard for bicycle helmets (16 CFR part 1203), but the CPSIA section 104 requirements for durable infant or toddler products do not provide for such exemptions. Nevertheless, several alternatives to the NPR could have a different impact on small businesses. The Commission requests comment on these alternatives or other alternatives that could reduce the potential burden on small entities.

1. Not Establishing a Mandatory Standard

While not establishing a safety standard for rockers would minimize the regulatory impact on small businesses, failing to establish a mandatory standard would fail to reduce injuries and deaths from the known hazards. Establishing a mandatory standard satisfies the mandate in section 104 of the CPSIA requiring the Commission to create mandatory safety standards for all durable infant or toddler products.

2. Only Including Infant Rockers in the Scope

The incident data for rockers, discussed in section III of the preamble, reflect that all of the fatalities and most of the injuries were to children less than one year old. While CPSC could consider excluding from the scope of the rule those rockers that are marketed for use only by children over one year old, this would not significantly reduce the impact on small businesses, as there are very few rockers on the market solely for toddlers. Such limitation in scope also would not effectively address the hazards because rockers marketed for older children foreseeably could still be used for infants. Further, the incident data reflects some non-fatal injuries to children over one year old.

3. Incorporating ASTM F3084–22 Without Modifications

The Commission considered proposing to incorporate by reference ASTM F3084–22, without any modifications. While this would reduce the impact on two U.S. small businesses that claim to be compliant with the ASTM standard, the overall impact on U.S. small businesses, as compared to the Commission's proposed rule, would not be significant. Further, as discussed above, ASTM F3084–22 does not adequately address the suffocation and fall hazards rockers present.

4. A Different Effective Date of the Requirements

An effective date earlier than 180 days after publication could provide the benefits of the NPR more quickly but would increase the burden on small businesses by requiring them to more quickly redesign and test products. An earlier effective date could result in temporary shortages of rockers because the testing labs would need to receive accreditation before they could test for compliance to the new performance requirements. A later effective date could reduce impact on small businesses but would delay addressing the known hazards, including life-threatening risks.

IX. Environmental Consideration

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The NPR falls within the categorical exclusion.

X. Paperwork Reduction Act

This proposed rule for infant rockers contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Safety Standard for Infant and Infant/Toddler Rockers.

Description: The proposed rule would require each rocker within the scope of the rule to comply with ASTM F3084–22, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers,* modified by the proposed additional requirements summarized in the preamble. Sections 8 and 9 of ASTM F3084–22 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import rockers.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1240	50	1.6	80	1	80

Our estimate is based on the following:

ASTM F3084–22 requires that the name and the place of business (city, state, and mailing address, including zip code) or telephone number of the manufacturer, distributor, or seller be marked clearly and legibly on each product and its retail package. It also requires a code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

An estimated 13 U.S. firms supply rockers to the domestic market, as well as seven foreign manufacturers and about 30 foreign direct shippers, for a total of about 50 suppliers. We estimate the time required to respond to the collection is about one hour per model. Approximately 80 models of rockers were available for sale on the U.S. market as of March 2023. Therefore, each supplier is estimated to respond 1.6 times (80 models/50 suppliers = 1.6 responses). The estimated annual burden associated with the collection is 50 respondents × 1.6 responses × 1 hour per response = 80 hours.

CPSC estimates that the hourly compensation for the time required to respond to the collection is $37.41 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_06162023.pdf*). The estimated annual cost to industry associated with the collection accordingly is $2,993 ($37.41 per hour × 80 hours = $2,992.80). No operating, maintenance, or capital costs are associated with the collection.

The NPR requires instructions to be supplied with rockers. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Firms that supply rockers to the U.S. market typically provide instructional literature to consumers. Therefore, we tentatively estimate that no burden hours are associated with supplying instructional literature because any burden associated with supplying instructions would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

Based on this analysis, the proposed standard for rockers would impose a burden to industry of 80 hours at a cost of $2,993 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), CPSC has submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments (see the **ADDRESSES** section at the beginning of this document).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- whether the collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates.

XI. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), states that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules.'' Therefore, the preemption provision of section 26(a) of the CPSA would apply to a rule issued under section 104.

XII. Request for Comments

The Commission proposes a rule under section 104(b) of the CPSIA to issue a consumer product safety standard for Infant and Infant/Toddler Rockers, to amend part 1112 to add Infant and Infant/Toddler Rockers to the list of children's product safety rules for which CPSC has issued an NOR, and to amend part 1130 to identify Infant and Infant/Toddler Rockers as a durable infant or toddler product subject to CPSC consumer registration requirements. The Commission requests comments on any aspect of these proposals, including the proposed effective date and the costs of compliance with, and testing to, the proposed *Safety Standard for Infant and Infant/Toddler Rockers.* During the comment period, the ASTM F3084–22, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers,* is available as a read-only document at: *https://www.astm.org/cpsc.htm.*

In addition to the areas identified above, the Commission seeks comment on the following matters:

A. What physical design characteristics, not already addressed in this package, would best signal to adults that rockers are unsafe for infant sleep? Should any such characteristics be required for rockers?

B. What benefits, if any, do younger infants (under 4 months) derive from rockers in terms of motor development and visual stimulation? Do the benefits change and/or increase as an infant progresses from early infancy?

C. Should rockers be allowed to be marketed, intended, or designed to accommodate babies that are too young to gain any physical developmental benefit from using them?

D. Would any additional warnings be useful? If so, what messages should be included?

E. The Commission invites comments on staff's recommendation that the warning label specifically address premature infants: ''For babies born prematurely, consult a doctor before use.'' (See discussion at OS–125, page 68 in Tab B of Staff's NPR Briefing Package). Is a warning appropriate for any other groups of infants, for instance, infants under four months of age?

F. Should soothing features, like vibration or calming sounds, be permitted on rockers?

G. Whether the NPR has identified the appropriate firmness test points, or whether any other test points should be included, for example, a third firmness test point in an area of the head space of the product that is most likely to fail the test, comparable to the additional test points proposed in the recent NPR for nursing pillows at 88 FR 65865, 65883 (Sept. 26, 2023)?

H. Whether an anti-stockpiling provision should be included and, if so, whether the Commission should include an anti-stockpiling provision comparable to the one proposed in the recent SNPR for portable generators at 88 FR 24346, 24372 (Apr. 20, 2023)?

I. Should torso angle restrictions be included? If so:

1. Should those restrictions set a maximum angle, under which sleep is appropriately safe?;

2. Should those restrictions set a minimum angle, above which a baby is sitting upright and unlikely to sleep?; or

3. Should those restrictions do both of the above (*i.e.,* should products be permitted to be below X degrees or above Y degrees, but not any of the angles in between X and Y)?

J. The Commission requests comment on whether any rocker (with an incline ''greater than 10 degrees'') in which infants are likely to fall asleep is safe for infants under 5 months, or for infants under 6 months. And, if such products are not safe, what modifications to the proposed rule—such as, for example, age grading—should be made to ensure that those products are not available for children in that age range?

K. The Commission invites comments on the proposed definitions of infant rocker and infant/toddler rocker.

1. In addition to the staff's recommendations that the definitions include a weight limit, should a minimum age be specified?

2. With respect to product angle, is the specification of ''greater than 10 degrees'' in the proposed definition adequate to address positional asphyxia risks?

L. According to the June 2023 report from Boise State University, *Seated Products Characterization and Testing,* ''Future studies should focus more on the biomechanical differences between younger and older infants within infant products.'' (p. 173) The Commission requests comments on the biomechanical differences that impact the risks of injury and death associated with infant and infant/toddler rockers, particularly for premature infants and infants under 4 months.

Submit comments in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1240

Consumer protection, Incorporation by reference, Infants and children, Labeling, Law enforcement, Seats, Toys.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(51) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

(51) 16 CFR part 1240, Safety Standard for Infant and Infant/Toddler Rockers.

* * * * *

■ 3. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

■ 4. Amend § 1130.2 by adding paragraph (a)(20) to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

§ 1130.2 Definitions.

* * * * *

(a) * * *

(20) Infant and Infant/Toddler Rockers.

* * * * *

■ 5. Add part 1240 to read as follows:

PART 1240—SAFETY STANDARD FOR INFANT AND INFANT/TODDLER ROCKERS

Sec.

1240.1 Scope.

1240.2 Requirements for infant and infant/toddler rockers.

Authority: 15 U.S.C. 2056a.

§ 1240.1 Scope.

This part establishes a consumer product safety standard for Infant and Infant/Toddler Rockers.

§ 1240.2 Requirements for infant and infant/toddler rockers.

(a) Except as provided in paragraph (b) of this section, each infant and infant/toddler rocker must comply with all applicable provisions of ASTM F3084–22, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers* (approved May 1, 2022). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov.* 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.* A free, read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may also obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.*

(b) Comply with the ASTM F3084–22 standard with the following additions or exclusions:

(1) Instead of complying with section 3.1.6 and 3.1.7 of ASTM F3084–22, comply with the following:

(i) 3.1.6 *infant rocker, n*—a freestanding product intended to support an occupant who has not developed the ability to sit up unassisted, up to 20 lb. (approximately 0 through 6 months of age), in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with the aid of the caregiver or by other means.

(ii) 3.1.7 *infant/toddler rocker, n*—a freestanding product intended to support an occupant in a seated, reclined position greater than 10° and to facilitate rocking by the occupant with the aid of the caregiver or by other means until the occupant is approximately age 2.5 years, up to 40 lb.

(2) In addition to complying with sections 3.1.1 through 3.1.17 of ASTM F3084–22, comply with the following:

(i) 3.1.18 *tethered strap, n*—an exposed strap underneath or behind the occupant support surface with both ends secured to the product (see 6.8).

(ii) 3.1.18.1 *Discussion*—This specifically excludes straps that are loose or hanging from a product that are not intended to be attached to another component according to the manufacturer's instructions.

(iii) 3.1.18.2 *Discussion*—The strap may consist of monofilaments, rope, woven and twisted cord, plastic and textile tapes, or ribbon.

(3) Add section 3.1.19 to ASTM F3084–22:

3.1.19 *rocking, v*—forward and backward motion via a nonstationary base.

(4) Instead of complying with sections 6.3.1 and 6.3.1.1 of ASTM F3084–22, comply with the following:

(i) 6.3.1 *Forward Stability*—The rocker shall not tip over when tested in accordance with 7.4.1. This shall be for all infant rockers and infant/toddler rockers in the infant rocker use, mode, or position.

(ii) 6.3.1.1 *Forward Stability Infant/Toddler Rockers*—If the product is intended for use after the occupant can sit upright unassisted with a manufacturer's recommended weight above 20 lb., the rocker shall not tip over when tested in accordance with 7.4.2.

(5) Add sections 6.8, 6.8.1, and 6.8.2 to ASTM F3084–22:

(i) 6.8 *Tethered Strap Accessibility for Non-Occupants*—Any products that have a tethered strap (see 3.1.18) shall meet either 6.8.1 or 6.8.2 when tested in accordance with 7.11.

(ii) 6.8.1 A bounded opening formed by tethered strap(s), alone or in conjunction with the product, shall not allow the passage of the small head probe (Figure 2 to paragraph (b)(9)(ix)) when tested in accordance with 7.11.

(iii) 6.8.2 A bounded opening formed by tethered strap(s), alone or in conjunction with the product, shall allow the passage of the large head probe (Figure 3 to Paragraph (b)(9)(xii)), and the tethered strap portion of the bounded opening shall not be greater than 7.4 in. (188 mm) long when tested in accordance with 7.11.

(6) Add section 6.9 to ASTM F3084–22:

6.9 *Drop Test*—The rocker shall not create a hazardous condition as defined in section 5 when tested in accordance with 7.12.

(7) Add sections 6.10, 6.11, and 6.12 to ASTM F3084–22:

(i) 6.10 *Battery Compartments (remote control devices are exempt from these requirements):*

(ii) 6.10.1 Each battery compartment shall provide a means to contain the electrolytic material in the event of a battery leakage. This containment means shall not be accessible to the occupant.

(iii) 6.10.2 Positive protection from the possibility of charging any primary (non-rechargeable) battery shall be achieved either through physical design of the battery compartment or through the use of appropriate electrical circuit design. This applies to situations in which a battery may be installed incorrectly (reversed), and in which a battery charger may be applied to a product containing primary batteries. This section does not apply to a circuit having one or two batteries as the only source of power.

(iv) 6.10.3 The surfaces of any accessible electrical component, including batteries, shall not achieve temperatures exceeding 160 °F (71 °C) when tested in accordance with 7.13. At the conclusion of the test, there shall be no battery leakage or, explosion or a fire to any electrical component. This test shall be performed prior to conducting any other testing within the performance requirements section.

(v) 6.11 *Firmness*—The surface of the rocker that supports the infants head shall displace less than 11mm (0.43 in.) for a 10N (2.25 lb.) force when tested in accordance with 7.14.

(vi) 6.12 *Concavity*—The radius of surface of the rocker that supports the infant's head shall be greater than 22 cm (8.66 in.) when tested in accordance with 7.15.

(8) Instead of complying with section 7.4.1.6 of ASTM F3084–22, comply with the following:

7.4.1.6 Apply a static load of 21 lbf. (93 N) vertically downward on the stability test fixture in the location designated in Figure 15 to paragraph (b)(17) (6-in. (152.4-mm) in front of the crotch post) within a period of 5 s and maintain for an additional 60 s (Figure 9 to section 7 of ASTM F3084–22). If the stability test fixture touches the test surface and prevents the product from tipping over, retest the product near the edge of an elevated test surface to allow the product to tip.

(9) Add section 7.11 to ASTM F3084–22:

(i) 7.11 *Tethered Strap Accessibility Testing:*

(ii) 7.11.1 Assemble the product in one of the manufacturer's recommended use positions.

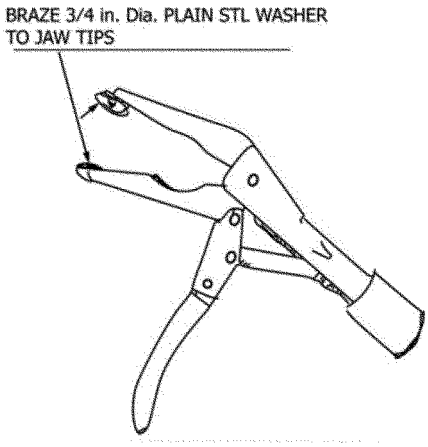
(iii) 7.11.2 Adjust any strap underneath or behind the occupant support surface to its full-length configuration. This includes adjusting any sliding buckle and/or other hardware.

(iv) 7.11.3 For straps that are part of the restraint system, unbuckle the restraint system to allow for the maximum strap length underneath or behind the occupant support surface.

(v) 7.11.4 Where applicable, orient any fasteners, buckles, clips, or other hardware in the position most likely to prevent them from being pulled through any opening.

(vi) 7.11.5 Using a ¾ in. (19 mm) diameter clamping surface (Figure 1 to paragraph (b)(9)(vi)), gradually pull on the tethered strap from underneath or behind the occupant support surface in the most onerous direction most likely to release the strap through the opening with a force of 5 lbf. (22 N). Apply the force over a period of 5 s and maintain for an additional 10 s or until the strap releases, whichever comes first.

Figure 1 to Paragraph (b)(9)(vi)—A ¾-in. (19-mm) Diameter Clamp



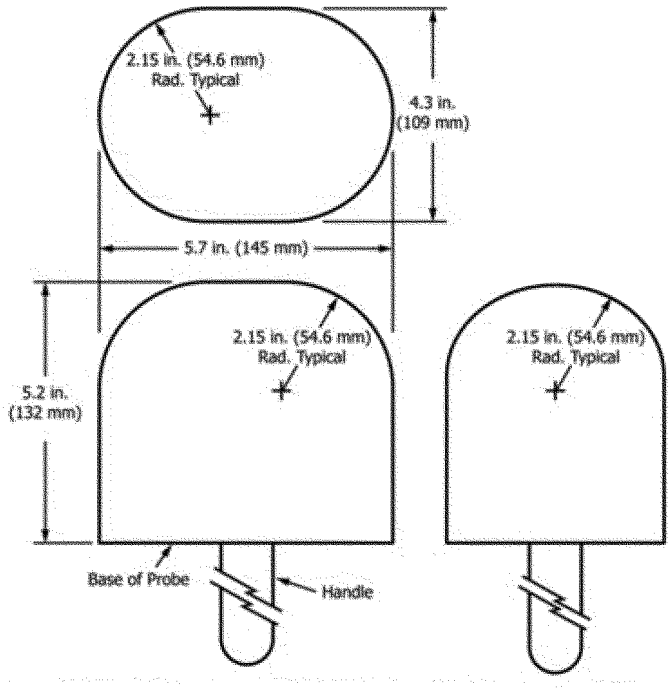
Note 1 to Figure 1 to paragraph (b)(9)(vi): Reprinted, with permission, from ASTM F406–22 Standard Consumer Safety Specification for Non-Full-Size Cribs/Play Yards, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

(vii) 7.11.5.1 If during the test procedure in 7.11.5, the strap remains does not release at a force of 5 lbf. (22 N) or less, proceed to 7.11.6.

(viii) 7.11.5.2 If during the test procedure in 7.11.5, the tethered strap releases, replace the strap through the opening into its original test position described in 7.11.3 and 7.11.4. Repeat the force application in 7.11.5 four more times for a total of five times. If the strap releases during every one of the five individual tests, this strap is exempt from 7.11.6, 7.11.7, and 7.11.8. If the strap remains attached during any of the five force applications, proceed to 7.11.6.

(ix) 7.11.6 Rotate the small head probe (Figure 2 to paragraph (b)(9)(ix)) to the orientation most likely to fail and gradually apply a force of 25 lb. (111 N) in the bounded opening. Apply the force perpendicular to the base of the probe in the direction most likely to fail within a period of 5 s and maintain it for an additional 10 s.

Figure 2 to Paragraph (b)(9)(ix)—Small Head Test Probe



Dimensions are based on a 5th percentile 6-month-old child.

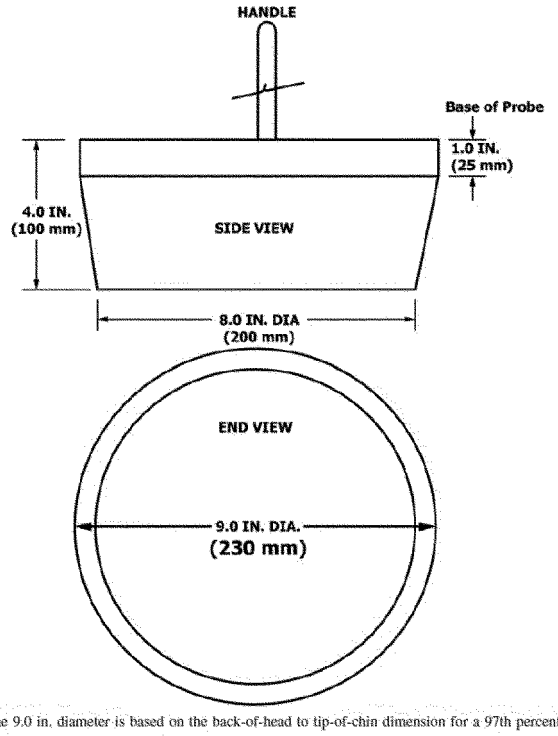
Note 2 to Figure 2 to paragraph (b)(9)(ix): Reprinted, with permission, from ASTM F406–22 Standard Consumer Safety Specification for Non-Full-Size Cribs/Play Yards, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

(x) 7.11.6.1 If the small head probe (Figure 2 to paragraph (b)(9)(ix)) cannot pass entirely through the opening in any orientation, this bounded opening passes 6.8.1.

(xi) 7.11.6.2 If the small head probe (Figure 2 to paragraph (b)(9)(ix)) can pass entirely through the opening in any orientation, proceed to 7.11.7.

(xii) 7.11.7 Determine if the large head probe (Figure 3 to paragraph (b)(9)(xii)) can be freely inserted through the bounded opening.

Figure 3 to Paragraph (b)(9)(xii)—Large Head Test Probe



The 9.0 in. diameter is based on the back-of-head to tip-of-chin dimension for a 97th percentile 3-year-old.

Note 3 to Figure 3 to paragraph (b)(9)(xii): Reprinted, with permission, from ASTM F406–22 Standard Consumer Safety Specification for Non-Full-Size Cribs/Play Yards, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

(xiii) 7.11.7.1 If the large head probe (Figure 3 to paragraph (b)(9)(xii)) cannot pass entirely through the opening in any orientation, this bounded opening fails 6.8.2.

(xiv) 7.11.7.2 If the large head probe (Figure 3 to paragraph (b)(9)(xii)) can pass entirely through the opening in any orientation, proceed to 7.11.8.

(xv) 7.11.8 Measure the available length of the tethered strap from its two attachment points on the product under a load of 5 lb. (2.27 kg).

(xvi) 7.11.8.1 If the tethered strap is greater than 7.4 in. (188 mm), this tethered strap fails 6.8.2.

(xvii) 7.11.8.2 If the tethered strap is less than or equal to 7.4 in. (188 mm), this tethered strap passes 6.8.2.

(xviii) 7.11.9 Repeat for each bounded opening formed with tethered strap(s), in all manufacturer's recommended use positions.

(10) Add section 7.12 through 7.16 to ASTM F3084–22:

(i) 7.12 *Drop Test:*

(ii) 7.12.1 The rocker shall be dropped from a height of 36 in. (910 mm).

(iii) 7.12.1.1 If the rocker does not fold, drop the rocker once on each of six different planes (top, bottom, front, rear, left side, and right side).

(iv) 7.12.1.2 If the rocker does fold, drop the rocker once on each of six different planes, both in the folded and erect configurations.

(v) 7.13 *Battery Compartment Test*

(vi) 7.13.1 The battery compartment shall be tested using fresh alkaline batteries or an a/c power source. If the function powered by the compartment can be operated using both, then both batteries and a/c power must be tested separately. If another battery chemistry is specifically recommended for use in the rocker by the manufacturer, repeat the test using the batteries specified by the manufacturer. If the rocker will not operate using alkaline batteries, then test with the type of battery recommended by the manufacturer at the specified voltage. The test is to be carried out in a draft-free location, at an ambient temperature of 68 ± 9 °F (20 ± 5 °C).

(vii) 7.13.1.1 Operate the function powered by the battery compartment at the maximum speed or highest intensity. Do not disable any mechanical or electrical protective device, such as clutches or fuses. Operate the function powered by the battery compartment continuously, and record peak temperature. The test shall be discontinued 60 min after the peak temperature is recorded. If the function shuts off automatically or must be kept ''on'' by hand or foot, monitor temperatures for 30 s, resetting the function as many times as necessary to complete the 30 s of operation. If the function shuts off automatically after an operating time of greater than 30 s, continue the test until the function shuts off.

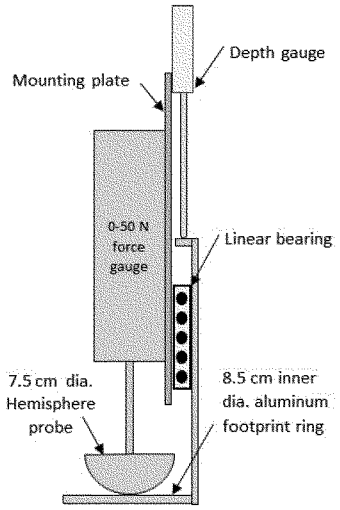
(viii) 7.14 *Firmness Test*

(ix) 7.14.1 *Hand-Held Firmness Test Device:*

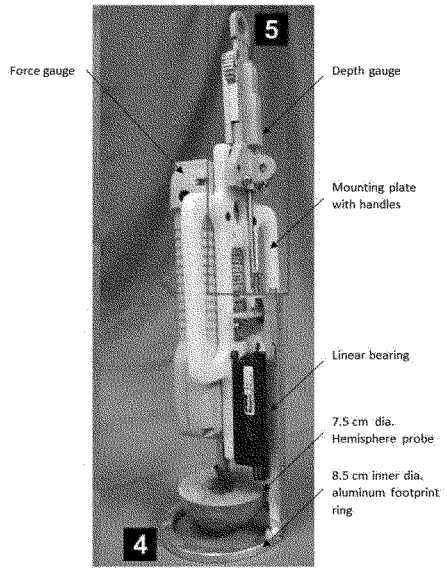
(x) 7.14.1.1 The test device (Figure 4 to paragraph (b)(10)(x)) shall consist of a 7.5 cm (2.95 in.) diameter hemisphere (made of a rigid material such as wood, metal, or plastic) attached to a compression force gauge with a range of 0 to 50 N; ±0.2% accuracy and a depth gauge with sufficient travel to measure displacement of the hemisphere relative to the footprint ring.

BILLING CODE 6355–01–P

Figure 4 to Paragraph (b)(10)(x)—Hand-Held Firmness Test Device



Schematic of the firmness test device



Example of test device using a commercially available force gauge, depth gauge and linear bearing. The hemisphere probe, mounting plate and aluminum footprint ring are fabricated to accommodate gauges.

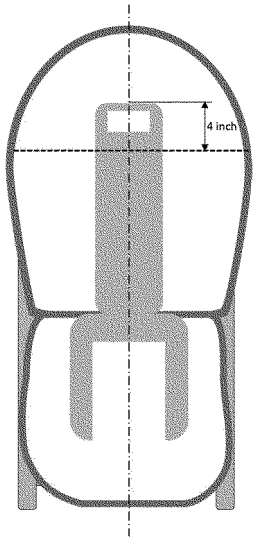
(Fabrication drawings in Appendix B, Handheld Firmness Tester Details in *Seated Product Characterization and Testing* report).

(xi) 7.14.2 *Test Point Location.*

(xii) 7.14.2.1 Place the Hinged Weight Gauge-Infant in the rocker with the hinged edge into the seat bight.

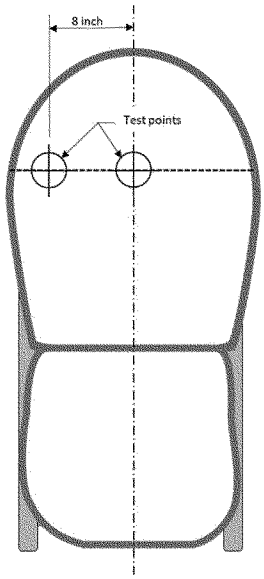
(xiii) 7.14.2.2 Mark a line on the seat back 4 in. (10.2 cm) from the top of the gauge (Figure 5 to paragraph (b)(10)(xiii)).

Figure 5 to Paragraph (b)(10)(xiii)—Location of Head Support Line



(xiv) 7.14.2.3 Remove the hinged weight gauge and mark the test points at the center line and 8 in. (20.3 cm) to the either side of the center line (Figure 6 to paragraph (b)(10)(xiv)).

Figure 6 to Paragraph (b)(10)(xiv)—Test Point Location



(xv) 7.14.3 Position the Hand-Held Test Device (Figure 4 to paragraph (b)(10)(x)) on a test location, with the footprint ring of the fixture centered on the location.

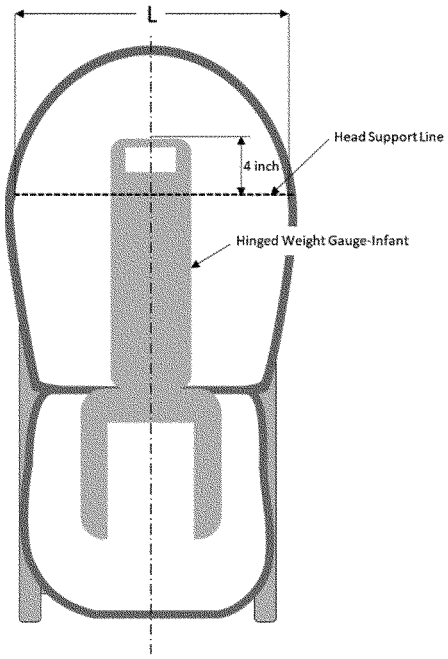
(xvi) 7.14.4 Apply a 10N (2.25 lb.) force for at least 30 seconds and record the peak deflection. The product meets the requirements if the deflection is less than 11 mm (0.43 in.).

(xvii) 7.14.5 Repeat the test on the remaining location.

(xviii) 7.15 Concavity Measurement

(xiv) 7.15.1 Configure the rocker with the Hinged Weight Gauge-Infant installed and locate the head support line as shown in Figure 7 to paragraph (b)(10)(xiv).

Figure 7 to Paragraph (b)(10)(xiv)—Width L Measurement



(xx) 17.15.2 Measure the width L, along the head support line and the interior of the side supports as shown in Figure 7 to paragraph (b)(10)(xiv).

(xxi) 7.15.3 Place a rigid bar between the side support and over the head support line. Measure the maximum vertical distance d, from the bottom of the bar to the hinged weight gauge (Figure 8 to paragraph (b)(10)(xxi)). Calculate the depth D by adding the thickness of the Hinged Weight Gauge-Infant to the vertical distance from the bottom of the bar to the top of the Hinged Weight Gauge-Infant.

Figure 8 to Paragraph (b)(10)(xxi)—Depth D = d + Thickness of the Gauge

(xxii) 7.15.4 Using the equation shown in Figure 9 to this paragraph (b)(10)(xxii), calculate the concavity r by inputting the width L and depth D into the equation below. r values greater than 22 cm (8.66 in.) meet the concavity requirement.

Figure 9 to Paragraph (b)(10)(xxii)—Concavity Equation

$$r = \frac{D}{2} + \frac{L^2}{8D}$$

(The larger the radius, the flatter the product, and vice versa).

(xxiii) 7.16 *Warning Label Visibility Test:*

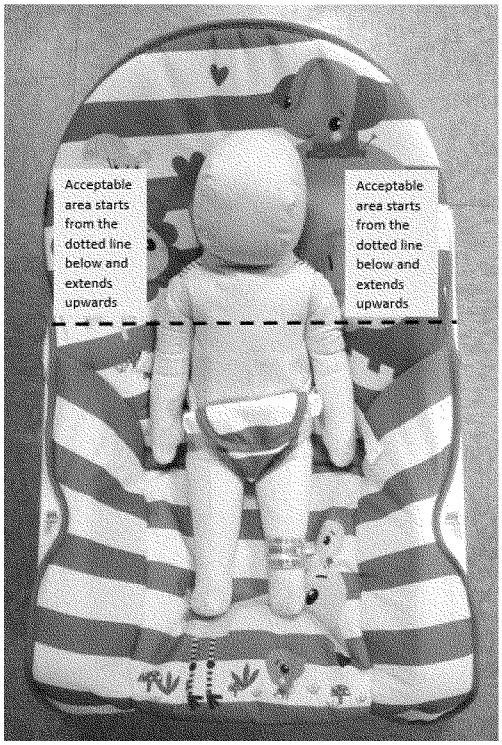
(xxiv) 7.16.1 Place rocker on the floor.

(xxv) 7.16.2 Place and secure the Newborn CAMI dummy (Figure 2 to section 2 of ASTM F3084–22) in the rocker.

(xxvi) 7.16.3 *Visibility Tests with and Without Accessories and Toy Bars:*

(xxvii) 7.16.3.1 *Visibility with CAMI Dummy Restrained in Seat*—Place the CAMI Newborn Dummy in the product with the restraint system engaged according to the manufacturer's instructions. While standing in front of the product with the Newborn CAMI dummy installed, verify that the required warnings are visible and placed above an imaginary horizontal line that crosses through the junctions of under arm and side of the torso armpits on both left and right sides and not obscured by any part of the dummy (Figure 10 to paragraph (b)(10)(xxvii)).

Figure 10 to Paragraph (b)(10)(xxvii)—Allowable Area for Warning Label Placement Starts From the Dotted Line That Crosses the Junctions of Underarm and Both Sides of the Torso



Note 4 to Figure 10 to paragraph (b)(10)(xxvii): The placement of the warnings is only applicable to the English language portions of the warning label.

(xxviii) 7.16.3.2 *Visibility with Accessories (Excluding Toy Bars)*—Rockers that include any accessory(ies) that could potentially obscure the warnings shall comply with visibility requirements of 7.16 both with such accessory(ies) in place (in all configurations and combinations) and with the accessory(ies) removed.

(xxix) 7.16.3.3 *Visibility with Toy Bar*—If any part of the required warnings is obscured by a toy bar or its attached toys but is visible with a shift of the observer's head position, then this is considered acceptable.

(11) Remove section 8.6.7, with Figure 14 and Figure 15 in ASTM F3084–22, from ASTM F3084–22.

(12) Add section 8.6.8 to ASTM F3084–22:

8.6.8 *Warning Location*—The applicable warnings as specified in 8.7 shall be on the front surface of the rocker seat back so as to comply with the visibility requirements in 7.16.

(13) Instead of complying with section 8.7.1 of ASTM F3084–22, comply with the following:

Warning Statements—Each product shall have warning statements. The text must address the warnings as shown in Figure 11 to paragraph (b)(13).

Note 5 to paragraphs 13, 14, and 15: ''Address'' means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product-specific is presented.

Figure 11 to Paragraph (b)(13)

⚠WARNING

SUFFOCATION & ASPHYXIA HAZARD: Using this product for **SLEEP, NAPS**, or on **SOFT SURFACES CAN KILL.**

- **NEVER** use this product for sleep.
- Stay near and watch baby during use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a bare crib or bassinet.
- For babies born prematurely, consult a doctor before use.
- **ALWAYS** use restraints. Adjust to fit snugly.
- **NEVER** use on a bed, sofa, cushion or other soft surface. Babies have suffocated when seats tipped over on soft surfaces.
- **NEVER** add soft bedding or padding.

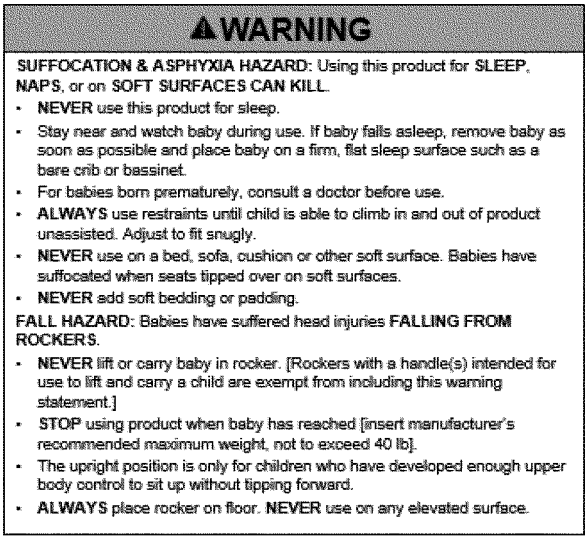
FALL HAZARD: Babies have suffered head injuries **FALLING FROM ROCKERS.**

- **NEVER** lift or carry baby in rocker. [Rockers with a handle(s) intended for use to lift and carry a child are exempt from including this warning statement.]
- **STOP** using product when baby starts trying to sit up or has reached [insert manufacturer's recommended maximum weight, not to exceed 20 lb], whichever comes first.
- **ALWAYS** place rocker on floor. **NEVER** use on any elevated surface.

(14) Instead of complying with section 8.7.2 of ASTM F3084–22, comply with the following:

Warning Statements—Each product shall have warning statements. The text must address the warnings as shown in Figure 12 to paragraph (b)(14):

Figure 12 to Paragraph (b)(14)



(15) Instead of complying with section 8.7.3 of ASTM F3084–22, comply with the following:

(i) *Warning Statements*—Each product shall have warning statements. The text must address the warnings as shown in Figure 13 to paragraph (b)(15)(ii) or Figure 14 to paragraph (b)(15)(ii):

(ii) 8.7.3 *Infant/toddler Rockers with Shoulder Straps as Part of the Restraint System may use either 8.7.3.1 or 8.7.3.2.*

Figure 13 to Paragraph (b)(15)(ii)

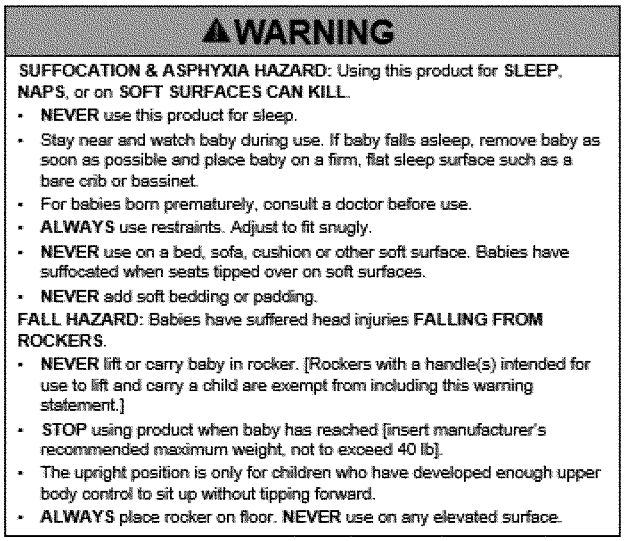


Figure 14 to Paragraph (b)(15)(ii)

⚠WARNING

SUFFOCATION & ASPHYXIA HAZARD: Using this product for **SLEEP, NAPS,** or on **SOFT SURFACES CAN KILL.**

- **NEVER** use this product for sleep.
- Stay near and watch baby during use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a bare crib or bassinet.
- For babies born prematurely, consult a doctor before use.
- **ALWAYS** use restraints until child is able to climb in and out of the product unassisted. Adjust to fit snugly.
- **NEVER** use on a bed, sofa, cushion or other soft surface. Babies have suffocated when seats tipped over on soft surfaces.
- **NEVER** add soft bedding or padding.

FALL HAZARD: Babies have suffered head injuries **FALLING FROM ROCKERS.**

- **NEVER** lift or carry baby in rocker. [Rockers with a handle(s) intended for use to lift and carry a child are exempt from including this warning statement.]
- **STOP** using product when baby has reached [insert manufacturer's recommended maximum weight, not to exceed 40 lb].
- The upright position is only for children who have developed enough upper body control to sit up without tipping forward.
- **ALWAYS** place rocker on floor. **NEVER** use on any elevated surface.

(16) In addition to complying with section 8.8 of ASTM F3084–22, comply with the following:

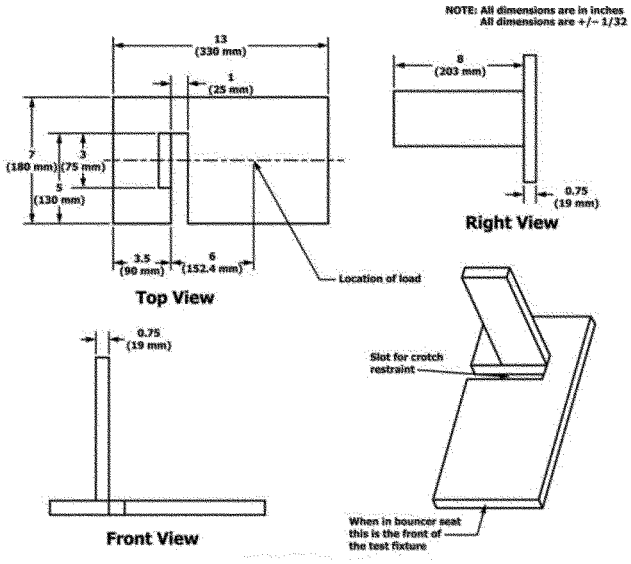
8.8 Manufacturers may present the SUFFOCATION & ASPHYXIA HAZARD and FALL HAZARD warning information on separate labels. If presented separately, both labels shall still meet the requirements set forth in sections 7.16 and 8.6.

(17) Instead of complying with section X1.2 of ASTM F3084–22, comply with the following:

X1.2 Subsection 6.3.1.1—The forward stability test is required if the rocker is to be used after a child can sit up unassisted due to incident data showing injuries because of occupants leaning forward between the ages of 6 and 9 months.

(18) Replace Figure 8 in ASTM F3084–22 with the following:

Figure 15 to Paragraph (b)(18)—Forward Stability Test Fixture



Note 6 to Figure 15 to paragraph (b)(18): Reprinted, with permission, from ASTM F2167–22 Standard Consumer Safety Specification for Infant Bouncer Seats, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. A copy of the complete standard may be obtained from ASTM International, *www.astm.org.*

Sarah Bock,

Paralegal Specialist, Consumer Product Safety Commission.

[FR Doc. 2023–23322 Filed 10–25–23; 8:45 am]

BILLING CODE 6355–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–09–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities; September 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 27, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–2427, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerances for Non-Inerts

1. *PP 3E9061.* EPA–HQ–OPP–2023–0258. Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR 180.629, upon the approval of the requested tolerances, by removing the established tolerances for residues of the fungicide flutriafol, including its metabolites and degradates in or on the following commodities: Brassica, head and stem (subgroup 5A) at 1.5 parts per million (ppm); brassica, leafy greens (subgroup 5B) at 7.0 ppm; cotton, undelinted seed at 0.50 ppm; fruit, pome group 11–09 at 0.40 ppm; fruit stone, group 12–10 at 1.5 ppm; and vegetable, leafy, except

brassica, crop group 4, except head lettuce and radicchio at 10 ppm. *Contact:* RD.

2. *PP 3E9064.* EPA–HQ–OPP–2023–0257. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR 180.601 by removing the established tolerances for residues of the fungicide cyazofamid, 4-chloro-2-cyano-N,N-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide, including its metabolites and degradates, in or on the following raw agricultural commodities: Bean, succulent, at 0.5 ppm; and bean, succulent shelled, at 0.08 ppm. *Contact:* RD.

B. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11737.* EPA–HQ–OPP–2023–0484. Sun Chemical, 5020 Spring Grove Avenue, Cincinnati, OH, 45232, requests to establish an exemption from the requirement of a tolerance for residues of aluminum (CAS Reg. No. 7429–90–5) when used as a pesticide inert ingredient (seed treatment colorant) in pesticide formulations under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN–11753.* EPA–HQ–OPP–2023–0485. Ecolab USA Inc., 1 Ecolab Place, St. Paul, MN 55102, requests to establish an exemption from the requirement of a tolerance for residues of Sodium C14–C16 Alpha Olefin (CAS Reg. No. 68439–57–6) when used as a pesticide inert ingredient (surfactant) in pesticide formulations under 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

C. New Tolerances for Non-Inerts

1. *PP 2E9046.* EPA–HQ–OPP–2023–0464. Mitsui Chemicals Agro, Inc. (MCAG) c/o BASF Corporation 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish an import tolerance in 40 CFR part 180 for residues of the insecticide, broflanilide, in or on the brassica head and stem vegetables (group 5–16) at 0.6 ppm; fruiting vegetables (group 8–10) at 0.1 ppm; tomato, dried at 0.7 ppm; tomato, paste at 0.3 ppm; leafy vegetables (group 4–16) at 4.0 ppm; leaf petiole vegetables (subgroup 22B) at 1.5 ppm; soybean at 0.06 ppm; and coffee at 0.01 ppm. An independently validated analytical method was submitted for analyzing residues of parent broflanilide and its metabolites S(PFP–OH)-8007 and DM–8007, each with appropriate sensitivity, in all crop and processed commodities. *Contact:* RD.

2. *PP 3E9061.* EPA–HQ–OPP–2023–0258. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606 requests to establish tolerances in 40 CFR 180.629 for residues of the fungicide flutriafol, [(±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1H-1,2,4-triazole-1-ethanol], including its metabolites and degradates in or on the following commodities: Brassica, leafy greens, subgroup 4–16B at 7 ppm; celtuce at 10 ppm; cottonseed subgroup 20C at 0.5 ppm; fennel, Florence, fresh leaves and stalk at 10 ppm; fruit, pome, group 11–10 at 0.4 ppm; fruit, stone, group 12–12 at 1.5 ppm; kohlrabi at 1.5 ppm; leafy greens subgroup 4–16A, except head lettuce and radicchio at 10 ppm; leaf petiole vegetable subgroup 22B at 10 ppm; tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm; and vegetable, brassica, head and stem, group 5–16 at 1.5 ppm. Compliance with the tolerances is to be determined by measuring flutriafol only. The nature of the residues of flutriafol is adequately understood and an acceptable analytical method is available for enforcement purposes. *Contact:* RD.

3. *PP 3E9064.* EPA–HQ–OPP–2023–0257. IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606 requests to establish tolerances in 40 CFR 180.601 for residues of the fungicide cyazofamid, including its metabolites and degradates, in or on the following raw agricultural commodities: Chick pea, edible podded, at 0.5 ppm; chick pea, succulent shelled, at 0.08 ppm; edible podded bean subgroup 6–22A at 0.5 ppm; parsnip root at 0.09 ppm; pulses, dried shelled bean, except soybean, subgroup 6–22E at 0.03 ppm; and succulent shelled bean subgroup 6–22C at 0.08 ppm. Compliance with the tolerance levels specified are to be determined by measuring only the sum of 4-chloro-2-cyano-N,N-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide and its metabolite, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, calculated as the stoichiometric equivalent of cyazofamid. Liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) methods are available for the enforcement of tolerances for cyazofamid residues of concern. *Contact:* RD.

4. *PP 1F8978.* EPA–HQ–OPP–2022–0257. Belchim US Crop Protection Corporation, 225 Wilmington West, Chester Pike, Suite 200, Chadds Ford, PA 19317, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide pyridate in or on dry pea vines, dry pea hay, dry pea seed (dried), soybean forage, soybean hay, and soybean seed (dried) at 0.05 ppm. The HPLC–MS/MS residue analytical method is used to measure and evaluate the chemical pyridate. *Contact:* RD.

5. *PP 2F9040.* EPA–HQ–OPP–2023–0246. ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077, requests to establish tolerances in 40 CFR 180.713(a)(1) for residues of the herbicide tiafenacil, including its metabolites and degradates, in or on pulses, dried shelled bean, except soybean, subgroup 6–22E at 0.03 ppm; pulses, dried shelled pea, subgroup 6–22F at 0.05 ppm; citrus fruit, group 10–10 at 0.01 ppm; pome fruit, group 11–10 at 0.01 ppm; stone fruit, group 12–12 at 0.01 ppm; tree nut, group 14–12 at 0.01 ppm; barley subgroup 15–22B at 0.015 ppm; sweet corn subgroup 15–22D at 0.01 ppm; grain sorghum and millet subgroup 15–22E at 0.01 ppm; rapeseed, subgroup 20A at 0.015 ppm; and peanut at 0.01 ppm, and in 40 CFR 180.713(a)(2) for residues of the herbicide tiafenacil, including its metabolites and degradates, in or on almond hulls at 0.03 ppm; barley, hay at 0.07 ppm; barley, straw at 0.04 ppm; corn, sweet, forage at 0.01 ppm; corn, sweet, stover at 0.015 ppm; pea, straw at 7 ppm; sorghum, forage at 0.01 ppm; and sorghum, stover at 0.015 ppm. Adequate enforcement methodology LC/MS/MS methods for plant and livestock commodities are available to enforce the tolerance expression. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: October 18, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–23472 Filed 10–25–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 672

[Docket No. FTA–2023–0025]

RIN 2132–AB43

Public Transportation Safety Certification Training Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing changes to requirements for the Public Transportation Safety Certification Training Program (PTSCTP). The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (IIJA), established new requirements for FTA's Public Transportation Safety Program that relate to PTSCTP requirements. The proposed revisions would streamline the PTSCTP communication process and clarify voluntary PTSCTP participation and refresher training requirements. FTA seeks comments from project sponsors, the transit industry, unions, other stakeholders, and the public on the proposed changes to the regulation.

DATES: Comments should be filed by December 26, 2023. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2023–0025, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Philip Monty, Office of Transit Safety and Oversight, (202) 366–7412 or *philip.monty@dot.gov.* For legal matters, contact Mark Montgomery, Office of Chief Counsel, (202) 366–1017 or *mark.montgomery@dot.gov.*

Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of Regulatory Action

This Notice of Proposed Rulemaking (NPRM) proposes to amend the Public Transportation Safety Certification Training Program (PTSCTP) regulation at 49 CFR part 672. The proposed rule maintains the existing minimum training requirements for State Safety Oversight Agency (SSOA) employees and contractors who conduct reviews, inspections, examinations, and other safety oversight activities of public transportation systems, and employees and contractors who are directly responsible for the safety oversight of a rail fixed guideway public transportation system. The proposed rule adds administrative requirements for recipients that are subject to the requirements of the rule.

B. Statutory Authority

Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for the PTSCTP, in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94). To implement the requirements of 49 U.S.C. 5329(c), FTA issued a final rule on July 19, 2018 that added part 672, ''Public Transportation Safety Certification Training Program,'' to title 49 of the Code of Federal Regulations (83 FR 34053).

The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (IIJA), enhances the Public Transportation Safety Program by adding new requirements that will be addressed in the PTSCTP curriculum.

C. Summary of Major Provisions

The proposed rule would revise portions of part 672, ''Public Transportation Safety Certification Training Program,'' in title 49 of the Code of Federal Regulations.

In general, this rulemaking applies to all recipients of Federal financial assistance under 49 U.S.C. chapter 53. However, the mandatory requirements of this rulemaking currently apply only to SSOA employees and contractors that conduct reviews, inspections, examinations, and other safety oversight activities of rail fixed guideway public transportation systems, and employees and contractors who are directly responsible for the safety oversight of a recipient's rail fixed guideway public transportation systems. In the preamble to the 2018 final rule, FTA noted that though the regulation currently only applies to rail public transit providers, ''[s]hould analysis of safety data and trends indicate increased safety risk in the bus transit industry, FTA retains authority to implement mandatory training requirements for bus transit safety oversight personnel'' as well (83 FR 34053, at 34055). Accordingly, FTA seeks recipient input on whether mandatory PTSCTP participation should extend to bus transit agencies and personnel.

First, FTA proposes requiring each recipient subject to the requirements of this rulemaking to identify a single point of contact to serve as a liaison with FTA regarding PTSCTP program information, including changes in enrolled personnel, new participant enrollment, refresher training confirmation, and other administrative needs. FTA proposes requiring each SSOA and rail transit agency participating in the PTSCTP to make semiannual submissions to FTA to include confirmation of employees and contractors designated by the recipient as PTSCTP participants and the recipient's refresher training requirements. These submissions will

enable FTA to effectively monitor ongoing SSOA and rail transit agency compliance with PTSCTP requirements and ensure FTA receives an agency's PTSCTP participant information on a consistent and timely basis. FTA will accept submissions via email at *FTASafetyPromotion@dot.gov* or via other electronic means defined by FTA.

Second, FTA proposes adding language to clarify existing processes related to PTSCTP voluntary participants. The new language addresses voluntary participant refresher training for employees and contractors of a recipient, as well as individuals not affiliated with a recipient, and clarifies that to receive a certificate of completion as a voluntary participant, individuals must complete the PTSCTP curriculum within three (3) years of their enrollment. Further, the proposed language clarifies that voluntary participants are not required to complete refresher training and that FTA will not issue renewal certificates to voluntary participants. The proposed language specifies that if a voluntary participant has received a PTSCTP certificate of completion and is subsequently designated by an SSOA or rail transit agency as a PTSCTP participant, the individual will need to complete required refresher training within two (2) years of designation.

Third, FTA proposes removing appendix A from the existing 49 CFR part 672. FTA proposes moving the SSOA requirements located in appendix A of the current rule to the body of the revised rule under subpart C. To allow for greater flexibility in addressing industry training needs, the PTSCTP curricula for mandatory and volunteer participants outlined in appendix A of the current regulation will be removed from the rule. FTA has published this information at: *https://www.transportation.gov/tsi/public-transportation-safety-certification-training-program-ptsctp-certificate.*

D. Benefits and Costs

The proposed rule adds administrative and training requirements for SSOAs and rail transit agencies subject to the PTSCTP. The rule would lead to increased compliance with PTSCTP requirements and cost savings for FTA staff; it would also result in increased costs for SSOAs and rail transit agencies. Table 1 summarizes the economic effects of the proposed rule over the first ten years from 2023—the assumed effective date of the rule—to 2032 in 2022 dollars. On an annualized basis, the rule would have net costs of $334,000 at a 7 percent discount rate (discounted to 2023) and $321,000 at 3 percent.

TABLE 1—SUMMARY OF ECONOMIC EFFECTS, 2023–2033

[$2022, discounted to 2023]

Item	Annualized (7%)	Annualized (3%)
Benefits:		
Cost savings for FTA staff	$6,317	$6,081
Costs:		
Staff enrollment	74,034	71,266
Point of contact identification	12,339	11,878
Point of contact responsibilities	137,320	132,187
Semi-annual reporting	24,678	23,755
Refresher training	91,596	88,172
Total costs	*339,967*	*32,258*
Net costs	333,650	321,177

II. Section-by-Section Analysis

Throughout 49 CFR part 672, FTA proposes to eliminate existing references to 49 CFR part 659. This regulation was rescinded following the publication of 49 CFR part 674 (see 87 FR 6783), which defines requirements for FTA's State Safety Oversight program.

Subpart A—General Provisions

Section 672.1 Purpose

FTA does not propose changes to this section.

Section 672.3 Scope and Applicability

FTA proposes dividing paragraph (b) into two paragraphs to provide additional clarity. This change does not affect existing requirements.

FTA has provided additional detail regarding the activities that serve as applicability criteria for designated personnel of SSOAs. The revised language uses ''reviews'' instead of ''audits'' to align with SSO Program terminology. The revised language adds the term ''inspections'' to address the new SSOA requirements for risk-based inspections established by the Bipartisan Infrastructure Law.

Section 672.5 Definitions

FTA proposes adding a definition of ''Initial training.'' This definition does not impact existing requirements and has been added to provide clarity regarding training required to receive an initial PTSCTP certificate of completion.

FTA proposes adding a definition of ''Public Transportation Safety Certification Training Program curriculum''. This definition does not impact existing requirements and has been added to provide clarity regarding the courses an individual must complete as a participant.

FTA proposes revising the existing definition of ''Rail fixed guideway public transportation system'' for clarity. The changes do not impact existing requirements.

FTA proposes adding a definition of ''Rail transit agency.'' This definition does not impact existing requirements and has been added to provide clarity of a rail transit agency.

FTA proposes to revise the definition of ''Federal Transit Administration'' to align with the definition used in other regulatory updates.

FTA proposes adding a definition of ''Refresher training.'' This definition is added to complement the proposed definition of ''Initial training'' and does not impact existing requirements.

FTA proposes adding a definition for ''Safety review.'' This definition has been added to clarify the term that is used in the SSOA applicability language in § 672.3(b)(1).

FTA proposes revising the definition of ''Designated personnel'' to include the ''Safety review'' language changes

made to the applicability criteria and the change from the term ''audits'' to ''reviews.''

FTA proposes adding a definition of ''Voluntary participant.'' This definition does not impact existing requirements and has been added to provide clarity regarding voluntary participation.

Subpart B—Training Requirements

Section 672.11 State Safety Oversight Agency Employees and Contractors Who Conduct Reviews, Inspections, Examinations, and Other Safety Oversight Activities of Rail Fixed Guideway Public Transportation Systems

This section establishes designation requirements for certain SSOA employees and contractors. FTA proposes amending existing language to provide clarity on the SSOA's responsibility for designating individuals and ensuring a designee's compliance with the applicable training requirements. These changes do not affect existing requirements.

FTA proposes requiring SSOAs to ensure that designated personnel are enrolled in the PTSCTP within 30 days of designation. The three-year deadline for completing the applicable training requirements of part 672 and the PTSCTP curriculum will be based on the participant's PTSCTP enrollment date. With this 30-day requirement, FTA is ensuring the accurate establishment of the three-year compliance deadline for designated individuals.

FTA proposes to identify refresher training requirements for designated SSOA participants in a new paragraph (d). FTA proposes maintaining the existing PTSCTP refresher training requirement for SSOA-defined refresher training, which must include at least one (1) hour of safety oversight training. FTA proposes adding refresher training developed by FTA as a second required refresher training element.

Section 672.13 Rail Transit Agency Employees and Contractors Who Are Directly Responsible for the Safety Oversight of a Rail Fixed Guideway Public Transportation System

This section establishes designation requirements for certain rail transit agency employees and contractors. FTA proposes amending existing language to provide clarity on the rail transit agency's responsibility for designating individuals and ensuring a designee's compliance with the applicable training requirements. These changes do not affect existing requirements. FTA expects SSOAs to oversee the designation of rail transit agency employees and contractors who are directly responsible for the safety oversight of a rail fixed guideway public transportation system as part of their required oversight duties established under 49 CFR part 674.

FTA proposes requiring rail transit agencies to ensure that designated personnel are enrolled in the PTSCTP within 30 days of designation. The three-year deadline for completing the applicable training requirements of part 672 and the PTSCTP curriculum will be based on the participant's PTSCTP enrollment date. With this 30-day requirement, FTA is ensuring the accurate establishment of the three-year compliance deadline for designated individuals.

FTA proposes to identify refresher training requirements for designated rail transit agency participants in a new paragraph (d). FTA proposes maintaining the existing PTSCTP refresher training requirement for refresher training defined by the rail transit agency, which must include at least one (1) hour of safety oversight training. FTA proposes adding refresher training developed by FTA as a second required refresher training element. FTA intends for SSOAs to oversee a rail transit agency's compliance with refresher training requirements as part of their required oversight duties established under 49 CFR part 674.

Section 672.15 Evaluation of Prior Certification and Training

FTA proposes revising § 672.15 to clarify existing processes regarding the evaluation of prior certification and training. If participants would like credit for a non-FTA course to meet FTA course requirements, FTA asks participants to submit an equivalency credit request form available on FTA's website (*https://www.transit.dot.gov/regulations-and-guidance/safety/safety-training*) via email to *FTASafetyPromotion@dot.gov.* These changes do not affect existing requirements.

Section 672.17 Voluntary Participants

FTA proposes adding this new section to provide clarification on existing processes related to PTSCTP voluntary participants. This section confirms FTA's classification of voluntary PTSCTP participation and what voluntary participation entails. FTA proposes to eliminate refresher training requirements previously associated with maintaining voluntary PTSCTP certification and no longer renew certification for voluntary participants. Refresher training requirements are defined for designated participants in §§ 672.11(d) and 672.13(d). If a voluntary participant has received PTSCTP certification and is subsequently designated by an SSOA or rail transit agency as a PTSCTP participant, the individual would simply need to meet the established refresher training requirements for designated PTSCTP participants within two (2) years of designation.

Subpart C—Administrative Requirements

Section 672.21 Records

FTA proposes revising § 672.21 to establish new administrative requirements for recipients subject to the requirements of the rule, including SSOAs and rail transit agencies. FTA expects to conduct PTSCTP-related communication with recipients through email (*FTASafetyPromotion@dot.gov*) until such time as FTA defines an alternative method for information submission.

FTA proposes revising § 672.21(a), to clarify an applicable grantee's responsibilities for ensuring its designated personnel meet the requirements established by this part. These responsibilities include ensuring designated personnel are enrolled in the PTSCTP, ensuring designated personnel complete the initial training within three years of enrollment, and ensuring designated personnel complete required refresher training every two years upon completion of the PTSCTP curriculum.

In § 672.21(b), FTA proposes requiring SSOAs and rail transit agencies to identify a single point of contact (POC) at the agency who will serve as a liaison with FTA regarding PTSCTP records. FTA expects recipients to provide FTA with standard contact information for the identified PTSCTP POC, including name, title, phone number, and email address.

In § 672.21(c), FTA proposes to add a section outlining responsibilities of the identified PTSCTP POC, including informing FTA of changes in enrolled PTSCTP participants, enrolling new PTSCTP participants, and confirming refresher training requirements and completion for participants.

In § 672.21(d), FTA proposes to add a semiannual reporting requirement for PTSCTP. FTA proposes two reporting deadlines each year, January 31 and July 31 each year. FTA proposes requiring the identified PTSCTP POC to submit a current list of individuals designated as required PTSCTP participants, a current list of individuals at the agency that are enrolled voluntarily, and the course or courses that that agency has identified as required PTSCTP refresher training.

For refresher training requirement documentation, FTA proposes requiring the PTSCTP POC to report the specific name and length of each course, as well as the name of the course training provider.

In § 672.21(e), FTA proposes to clarify the existing requirement for SSOAs to submit their Technical Training Plan to FTA as part of its annual reporting requirements established at 49 CFR 674.39. FTA has also replaced the reference to ''System Safety Program Plan'' in appendix A of the current rule with ''Agency Safety Plan'' in the proposed § 672.21(e). FTA also proposes requiring training records to include the minimum passing scores for proficiency tests. This provides FTA with the parameters for passing and failing the subject proficiency test and enables FTA to interpret proficiency test scores.

Section 672.23 Availability of Records

FTA does not propose changes to this section.

Subpart D—Administrative Requirements

Section 672.31 Requirement To Certify Compliance

FTA does not propose changes to this section.

III. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. OMB has determined that the proposed rule is not significant within the meaning of Executive Order 12866.

Overview and Need for Regulation

The proposed rule would add administrative and training requirements for SSOAs and rail transit agencies subject to the requirements of the PTSCTP. The rulemaking would require each agency to establish a point of contact who would enroll designated personnel and submit proof of their training. SSOAs and RTAs would also provide semiannual documentation to FTA. Finally, the rulemaking would require designated personnel to complete FTA-defined refresher training every two years.

Benefits

The proposed rule would lead to increased agency compliance with PTSCTP requirements. This analysis does not estimate benefits from increased compliance, however, because the economic analysis for the PTSCP rule that established the requirements assumed that agencies would have full compliance. Estimating benefits would therefore lead to double-counting.

The proposed rule would also lead to cost savings for FTA staff and contractors who would need to spend less time verifying that agency employees met training requirements. To estimate cost savings, FTA used time and wage estimates for Federal employees and contractors currently supporting the PTSCP program. In 2022 dollars, the rulemaking would have an estimated annual cost savings of $5,900 (table 1).

TABLE 1—ANNUAL COST SAVINGS

[$2022]

Staff	Annual hours	Wages or rates	Cost savings
FTA program manager [1]	40	$93.56	$2,428
Contractor program manager	12	179.32	2,152
Contractor analyst	12	110.34	1,324
Total	64		5,904

[1] Wages estimated for a Washington DC-based Federal employee on the General Schedule (GS) pay scale at the midpoint of the GS–13 pay grade (step 5). *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf.*

Costs

To estimate the costs of meeting the new requirements, FTA estimated the number of entities affected, the number and type of staff involved, and the time needed (table 2). The requirements would affect 31 SSOAs and 64 rail transit agencies in operation as of March 1, 2023.[1] [2]

TABLE 2—ANNUAL STAFF AND HOURS NEEDED TO MEET REQUIREMENTS

Requirement	Affected entities	Annual hours	Total hours
Staff enrollment	31 SSOAs; 64 rail transit agencies	12	1,140
Point of contact identification	31 SSOAs; 64 rail transit agencies	2	190
Point of contact responsibilities	31 SSOAs; 64 rail transit agencies	24	2,280
Semi-annual reporting	31 SSOAs; 64 rail transit agencies	4	380
Refresher training	175 SSOA employees; 439 rail transit agency employees	4 (8 hours every 2 years).	2,456
Total			6,446

[1] Federal Transit Administration. August 3, 2022. ''State Safety Oversight Contacts.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/state-safety-oversight-contacts.*

[2] Federal Transit Administration. 2022. ''National Transit Database: 2021 Annual Database Service.'' *https://www.transit.dot.gov/ntd/data-product/2021-annual-database-service.*

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2023 in the ''Transit and Ground Passenger Transportation'' industry (North American Industry Classification System code 485000).[3] For SSOA and rail transit agency points of contact, the closest occupational category is ''General and Operations Managers'' (code 11–1021). For SSOA and rail transit agency personnel completing training, the closest occupational category is ''Transportation Inspectors'' (code 53–6051). FTA used median hourly wages as a basis for the estimates, multiplied by 1.62 to account for employer benefits.[4]

TABLE 3—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME

[$2022]

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
SSOA and RTA POCs	General and Operations Managers	11–1021	37.63	60.69
SSOA and RTA personnel	Transportation Inspectors	53–6051	21.61	34.86

Source: Bureau of Labor Statistics, May 2022 National Occupational Employment and Wage Estimates.

The administrative and reporting requirements of the proposed rule have estimated annual costs of $318,000 (table 4). The largest annual costs are for point of contact responsibilities ($128,000) and refresher training ($86,000). FTA would also incur minimal one-time costs to develop the refresher training materials.

TABLE 4—ANNUAL COSTS FOR ADMINISTRATIVE AND TRAINING REQUIREMENTS

[$2022]

Requirement	Annual costs
Staff enrollment	$69,191
Point of contact identification	11,532
Point of contact responsibilities	128,337
Semi-annual reporting	23,064
Refresher training	85,603
Total	317,726

Summary

Table 5 summarizes the economic effects of the proposed rule over the first ten years of the rule from 2023—the assumed effective date of the rule—to 2032 in 2022 dollars. On an annualized basis, the rule would have net costs of $334,000 at a 7 percent discount rate (discounted to 2023) and $321,000 at 3 percent.

TABLE 5—SUMMARY OF ECONOMIC EFFECTS, 2023–2033

[$2022, discounted to 2023]

Item	Annualized (7%)	Annualized (3%)
Benefits:		
Cost savings for FTA staff	$6,317	$6,081
Costs:		
Staff enrollment	74,034	71,266
Point of contact identification	12,339	11,878
Point of contact responsibilities	137,320	132,187
Semi-annual reporting	24,678	23,755
Refresher training	91,596	88,172
Total costs	*339,967*	*327,258*
Net costs	333,650	321,177

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities.

[3] Bureau of Labor Statistics. 2023. ''May 2022 National Occupational Employment and Wage Estimates: United States: NAICS 485000—Transit and Ground Passenger Transportation.'' *https://www.bls.gov/oes/current/naics3_485000.htm.*

[4] Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 22 (*https://www.bls.gov/news.release/ecec.htm*). Employer costs for State and local government workers averaged $57.60 an hour, with $35.69 for wages and $21.95 for benefit costs. To estimate full costs from wages, one would use a multiplier of $57.60/$21.95, or 1.62.

The proposed rule would require SSOAs and rail transit agencies to meet additional administrative requirements. Under the Regulatory Flexibility Act, local governments and other public-sector organizations qualify as small entities if they serve a population of less than 50,000. State agencies do not qualify, and no rail transit agency serves an urbanized area with a population of less than 50,000. FTA has therefore determined that the proposed rule would not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rulemaking does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995). This rulemaking does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any one year. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a *currently approved information collection* that is associated with a Notice of Proposed Rulemaking. The information collection (IC) was previously approved on October 4, 2022. However, this submission includes administrative requirements that will impact the information collected and the responding burden hours and costs to recipients.

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. Previously Approved Information Collection Request.

Summary of the Collection: The information collection provides minimum training requirements for Federal and State personnel and contractors who conduct safety audits and examinations of transit systems and for transit agency personnel and contractors who are directly responsible for safety oversight to enhance the technical proficiency.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure FTA grantees subject to the PTSCTP regulation certify compliance with training and refresher training requirements and allow FTA to monitor ongoing PTSCTP participation and compliance. The program establishes a uniform curriculum for safety training that consists of minimum requirements to enhance the technical proficiency of transit safety personnel.

Respondents: Respondents include State Safety Oversight Agency personnel and contractors who conduct safety audits and examinations of rail transit systems, rail transit agency personnel and contractors who are directly responsible for safety oversight, and bus transit agency personnel and contractors who are directly responsible for safety oversight.

Frequency: Annual, Periodic.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rulemaking qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rulemaking will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rulemaking under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rulemaking affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rulemaking under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rulemaking under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (*https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit*).

FTA has evaluated this action under the Executive order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rulemaking with the Unified Agenda.

List of Subjects in 49 CFR Part 672

Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

Nuria I. Fernandez
Administrator.

■ For the reasons stated in the preamble, and under the authority of 49 U.S.C. 5329(c), 5329(f), 5334, and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration proposes to revise 49 CFR part 672 as follows:

PART 672—Public Transportation Safety Certification Training Program

Sec.

Authority: 49 U.S.C. 5329(c)(f), 5334; 49 CFR 1.91.

Subpart A—General Provisions

§ 672.1 Purpose.

(a) This part implements a uniform safety certification training curriculum and requirements to enhance the technical proficiency of individuals who conduct safety reviews, inspections, examinations, and other safety oversight activities of public transportation systems operated by public transportation agencies and those who are directly responsible for safety oversight of public transportation agencies.

(b) This part does not preempt any safety certification training requirements required by a State for public transportation agencies within its jurisdiction.

§ 672.3 Scope and applicability.

(a) In general, this part applies to all recipients of Federal financial assistance under 49 U.S.C. chapter 53.

(b) The requirements of this part apply only to:

(1) State Safety Oversight Agencies and their employees and contractors that conduct safety reviews, inspections, examinations, and other safety oversight activities of rail fixed guideway public transportation systems, and

(2) Rail transit agencies and their employees and contractors who are directly responsible for the safety oversight of a recipient's rail fixed guideway public transportation systems.

(c) Voluntary participants may complete the Public Transportation Safety Certification Training Program curriculum in accordance with this part.

§ 672.5 Definitions.

As used in this part:

Administrator means the Federal Transit Administrator or the Administrator's designee.

Contractor means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or public transportation agency through contract or other agreement.

Designated personnel means:

(1) Employees and contractors identified by a recipient whose job function is directly responsible for safety oversight of the public transportation system of the public transportation agency; or

(2) Employees and contractors of a State Safety Oversight Agency whose job function requires them to conduct reviews, inspections, examinations, and other safety oversight activities of the rail fixed guideway public transportation systems subject to the jurisdiction of the agency.

Directly responsible for safety oversight means public transportation agency personnel whose primary job function includes the development, implementation and review of the agency's safety plan, and/or the State Safety Oversight Agency (SSOA) requirements for the rail fixed guideway public transportation system pursuant to part 674 of this chapter.

Examination means a process for gathering or analyzing facts or information related to the safety of a public transportation system.

FTA means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

Initial training means the group of specific courses an individual must complete within three (3) years of enrollment in the Public Transportation Safety Certification Training Program to receive their first program certificate.

Public transportation agency means an entity that provides public transportation service as defined in 49 U.S.C. 5302 and that has one or more modes of service not subject to the safety oversight requirements of another Federal agency.

Public Transportation Safety Certification Training Program curriculum means the initial training designated personnel or voluntary participants must complete to receive

the Public Transportation Safety Certification Training Program certificate of completion.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Recipient means a State or local governmental authority, or any other operator of a public transportation system receiving financial assistance under 49 U.S.C. chapter 53.

Refresher training means the training courses or activities designated personnel must complete within two (2) years of completing the Public Transportation Safety Certification Training Program curriculum and every two (2) years thereafter.

Safety review means a review or analysis of safety records and related materials.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in part 674 of this chapter.

Voluntary participant means an individual participating in the Public Transportation Safety Certification Training Program that is not subject to the requirements of this part, including:

(1) Employees and contractors of an applicable recipient that have not been designated under § 672.11(a) or § 672.13(a), and

(2) Individuals who are not employees or contractors of an applicable recipient.

Subpart B—Training Requirements

§ 672.11 State Safety Oversight Agency employees and contractors who conduct safety reviews, inspections, examinations, and other safety oversight activities of rail fixed guideway public transportation systems.

(a) Each SSOA shall designate its employees and contractors that must comply with the applicable training requirements of this part and the Public Transportation Safety Certification Training Program (PTSCTP) curriculum. Each SSOA must designate employees and contractors who conduct reviews, inspections, examinations, and other safety oversight activities of public transportation systems, including appropriate managers and supervisors of such personnel.

(b) Each SSOA shall ensure that each designated individual is enrolled in the PTSCTP within 30 days of the individual's designation. Each SSOA shall ensure the compliance of designated participants with the applicable training requirements of this part and the PTSCTP curriculum.

(c) Employees and contractors designated under paragraph (a) of this section shall complete applicable training requirements of this part and the PTSCTP curriculum within three (3) years of their initial PTSCTP enrollment.

(d) Thereafter, upon completion of the PTSCTP curriculum, designated personnel shall complete refresher training every two (2) years. Required refresher training shall consist of two elements:

(1) *Element 1:* Refresher training defined by FTA, and

(2) *Element 2:* Refresher training defined by the SSOA, which must include, at a minimum, one (1) hour of safety oversight training.

§ 672.13 Rail transit agency employees and contractors who are directly responsible for the safety oversight of a rail fixed guideway public transportation system.

(a) Each rail transit agency shall designate its employees and contractors that must comply with the applicable training requirements of this part and the PTSCTP curriculum. Each rail transit agency must designate employees and contractors who are directly responsible for safety oversight of rail modes.

(b) Each rail transit agency shall ensure that each designated individual is enrolled in the PTSCTP within 30 days of the individual's designation. Each rail transit agency shall ensure the compliance of designated participants with the applicable training requirements of this part and the PTSCTP curriculum.

(c) Employees and contractors designated under paragraph (a) of this section shall complete applicable training requirements of this part and the PTSCTP curriculum within three (3) years of their initial PTSCTP enrollment.

(d) Thereafter, upon completion of the PTSCTP curriculum, designated personnel must complete refresher training every two (2) years. Required refresher training shall consist of two elements:

(1) *Element 1:* Specific refresher training defined by FTA, and

(2) *Element 2:* Refresher training defined by the rail transit agency, which must include, at a minimum, one (1) hour of safety oversight training.

§ 672.15 Evaluation of prior certification and training.

(a) PTSCTP participants or an identified point of contact described in § 672.21(b) may request that FTA evaluate safety training or certification previously obtained from another entity to determine if the training satisfies an applicable training requirement of this part.

(b) Individuals requesting FTA evaluation of previously obtained training or certification must provide FTA with an official transcript or certificate of the training, a description of the curriculum and competencies obtained, and a brief statement detailing how the training or certification satisfies the applicable requirements of this part. The required information must be submitted using an equivalency credit request via electronic means defined by FTA.

(c) FTA will evaluate the submission and determine if a training requirement of this part may be waived. If a waiver is granted, designated personnel are responsible for completing all other applicable requirements of this part.

§ 672.17 Voluntary participants.

(a) Individuals not subject to the requirements of this part may participate voluntarily. To receive a certificate of completion as a voluntary participant, individuals must complete the PTSCTP curriculum within three (3) years of their enrollment. Voluntary participants are not required to complete refresher training. FTA will not issue renewal certificates to voluntary participants.

(b) If a voluntary participant has received a PTSCTP certificate of completion and is subsequently designated by an SSOA or rail transit agency as a PTSCTP participant, the individual will need to complete required refresher training within two (2) years of designation.

Subpart C—Administrative Requirements

§ 672.21 Records.

(a) *General requirement.* Each recipient subject to the requirements of this part shall ensure that its designated personnel:

(1) Are enrolled in the PTSCTP;

(2) Complete the initial training specified in the PTSCTP curriculum within three (3) years of their enrollment as a designated participant; and

(3) Complete required refresher training every two (2) years upon completion of the PTSCTP curriculum.

(b) *Point of contact identification.* Each recipient subject to the requirements of this part shall identify a single point of contact for communication with FTA regarding PTSCTP information. The recipient shall provide FTA, via electronic method defined by FTA, at a minimum, the point of contact's name, title, phone number, and email address.

(c) *Point of contact responsibilities.* Each point of contact will serve as a liaison between the recipient and FTA to inform FTA of changes in designated personnel participating in the PTSCTP, enroll new participants, submit proof of refresher training for the recipient's designated personnel, and address any other program documentation or communications needs.

(d) *Semiannual reporting.* Semiannually, between January 1st and January 31st and between July 1st and July 31st of each calendar year, the identified point of contact must submit documentation to FTA, via electronic method defined by FTA, that identifies:

(1) All employees and contractors of the recipient who are designated as PTSCTP participants; and

(2) The course or courses the recipient has identified as required refresher training for their designated personnel. The agency identified refresher training must include, at a minimum, one (1) hour of safety oversight training. The documentation must include the complete name and length of each course, as well as the name of the course training provider.

(e) *SSOA requirement.* (1) Each SSOA shall retain a record of the technical training completed by its designated personnel in accordance with the technical training requirements of this part. SSOAs shall retain training records for at least five (5) years from the date the record is created.

(2) Each SSOA shall develop and maintain a technical training plan for designated personnel who perform reviews, inspections, examinations, and other safety oversight activities. The SSOA will submit its technical training plan to FTA for review and evaluation as part of its annual reporting to FTA as required at § 674.39 of this chapter. This review process will support the consultation required between FTA and SSOAs regarding the staffing and qualification of the designated personnel in accordance with 49 U.S.C. 5329(e)(3)(D).

(3) Each SSOA shall identify the tasks related to reviews, inspections, examinations, and other safety oversight activities requiring SSOA approval, which must be performed by the SSOA to carry out its safety oversight requirements, and identify the skills and knowledge necessary to perform each oversight task at that system. At a minimum, the technical training plan will describe the process for receiving technical training in the following competency areas appropriate to the specific rail fixed guideway public transportation system(s) for which reviews and inspections conducted:

(i) Agency organizational structure.

(ii) Agency Safety Plan.

(iii) Knowledge of agency:

(A) Territory and revenue service schedules;

(B) Current bulletins, general orders, and other associated directives that ensure safe operations;

(C) Operations and maintenance rule books;

(D) Safety rules;

(E) Standard Operating Procedures;

(F) Roadway Worker Protection;

(G) Employee Hours of Service and Fatigue Management program;

(H) Employee Observation and Testing Program (Efficiency Testing);

(I) Employee training and certification requirements;

(J) Vehicle inspection and maintenance programs, schedules and records;

(K) Track inspection and maintenance programs, schedules and records;

(L) Tunnels, bridges, and other structures inspection and maintenance programs, schedules and records;

(M) Traction power (substation, overhead catenary system, and third rail), load dispatching, inspection and maintenance programs, schedules and records; and

(N) Signal and train control inspection and maintenance programs, schedules and records.

(4) The SSOA will determine the length of time for the technical training based on the skill level of the designated personnel relative to the applicable rail transit agency(s). FTA will provide a template as requested to assist the SSOA with preparing and monitoring its technical training plan and will provide technical assistance as requested. Each SSOA technical training plan that is submitted to FTA for review will:

(i) Require designated personnel to successfully:

(A) Complete training that covers the skills and knowledge needed to effectively perform the tasks.

(B) Pass a written and/or oral examination covering the skills and knowledge required for the designated personnel to effectively perform their tasks.

(C) Demonstrate hands-on capability to perform their tasks to the satisfaction of the appropriate SSOA supervisor or designated instructor.

(ii) Establish equivalencies or written and oral examinations to allow designated personnel to demonstrate that they possess the skill and qualification required to perform their tasks.

(iii) Require biennial refresher training to maintain technical skills and abilities, which includes classroom and hands-on training, as well as testing. Observation and evaluation of actual performance of duties may be used to meet the hands-on portion of this requirement, provided that such testing is documented.

(iv) Require that training records be maintained to demonstrate the current qualification status of designated personnel assigned to carry out the oversight program. Records may be maintained either electronically or in writing and must be provided to FTA upon request.

Records must include the following information concerning each designated personnel:

(A) Name;

(B) The title and date each training course was completed, the proficiency test score(s), and the minimum passing score of the test, where applicable;

(C) The content of each training course successfully completed;

(D) A description of the designated personnel's hands-on performance applying the skills and knowledge required to perform the tasks that the employee will be responsible for performing and the factual basis supporting the determination;

(E) The tasks the designated personnel are deemed qualified to perform; and

(F) Provide the date that the designated personnel's status as qualified to perform the tasks expires, and the date in which biennial refresher training is due.

(iv) Ensure the qualification of contractors performing oversight activities. SSOAs may use demonstrations, previous training and education, and written and oral examinations to determine if contractors possess the skill and qualification required to perform their tasks.

(vi) Periodically assess the effectiveness of the technical training. One method of validation and assessment could be efficiency tests or

periodic review of employee performance.

§ 672.23 Availability of records.

(a) Except as required by law, or expressly authorized or required by this part, a recipient may not release information pertaining to employees and contractors that is required by this part without the written consent of the individual.

(b) Individuals are entitled, upon written request to the recipient, to obtain copies of any records pertaining to their training required by this part. The recipient shall promptly provide the records requested by personnel and access shall not be contingent upon the recipient's receipt of payment for the production of such records.

(c) A recipient shall permit access to all facilities utilized and records compiled in accordance with the requirements of this part to the Secretary of Transportation, the Federal Transit Administration, or any State agency with jurisdiction over public transportation safety oversight of the recipient.

(d) When requested by the National Transportation Safety Board as part of an accident investigation, a recipient shall disclose information related to the training of employees and contractors.

Subpart D—Compliance and Certification Requirements

§ 672.31 Requirement to certify compliance.

(a) A recipient of FTA financial assistance under 49 U.S.C. chapter 53 that is subject to the requirements of this part as specified in § 672.3(b) shall annually certify compliance with this part in accordance with FTA's procedures for annual grant certification and assurances.

(b) A certification must be authorized by the recipient's governing board or other authorizing official and must be signed by a party specifically authorized to do so.

[FR Doc. 2023–23515 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 88, No. 206
Thursday, October 26, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Performance Review Board Membership

AGENCY: Departmental Administration, USDA.

ACTION: Notice of Performance Review Board appointments.

SUMMARY: This notice announces the members of the Senior Executive Service (SES) and Senior Level (SL) and Scientific and Professional (ST) Performance Review Boards (PRB). Agriculture has two PRBs with representatives from each USDA Mission Area. The PRBs are comprised of the Chairpersons and a mix of career and noncareer senior executives and senior professionals that meet annually to review and evaluate performance appraisal documents. The PRB provides a written recommendation to the Secretary for final approval of each executive's performance rating, performance-based pay adjustment, and performance award. The PRBs are advised by the Office of Human Resources Management, Office of General Counsel, and Office of the Assistant Secretary for Civil Rights to ensure compliance with laws and regulations.

DATES: The board membership is applicable beginning on October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Long, Acting Deputy Chief Human Capital Officer, Office of Human Resources Management, telephone: (202) 941–4075, or Rhonda C. Carr, Director, Human Resources Operations Division, telephone: (202) 720–3967.

SUPPLEMENTARY INFORMATION:

Membership

In accordance with 5 U.S.C. 4314(c)(4), the USDA Performance Review Board members are named below:

BAILEY, MELISSA
BENDER, STUART
BENNETT PATRICIA
BUCKNALL, JANET
CROCKETT, JOHN
EICHHORST, JOHN
ERHAN, SEVIM
FANTINATO, JESSICA
FRENCH, GERALDINE
HAMER, HUBERT
HEATH, LINDA
JACKSON, KIMBERLY
JAMES, ROSALIND
MANZANO, HEATHER
MCCROSSON, TIMOTHY
MCHUGH, TARA
MOORE, MELISSA
NEAL, ARTHUR
NICKERSON, CYNTHIA
PARK, JOON
PARSONS, JOSEPH
RAMIREZ, LISA
RATER, BARBARA
RIPLEY, INGRID
SHEA, JOHN
SLUPEK, MARK
SMITH, GREGORY
THARP, MELISSA
TUCKER, JENNIFER
WATSON, MICHAEL
WHITLEY, DANIEL
WILLIAMS, DUANE
XU, WEIHUAN

The Secretary of Agriculture, Thomas J. Vilsack, having reviewed and approved this document, is delegating the authority to electronically sign this document to Anita Adkins, Chief Human Capital Officer, for purposes of publication in the **Federal Register**.

Michelle Long,

Acting Deputy Chief Human Capital Officer.

[FR Doc. 2023–23622 Filed 10–25–23; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[FSIS–2023–0024]

National Advisory Committee on Microbiological Criteria for Foods: Public Meeting

AGENCY: Food Safety and Inspection Service (FSIS), Department of Agriculture (USDA).

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a virtual public meeting from November 14, 2023, through November 16, 2023. The NACMCF Secretariat will introduce newly appointed members for the 2023–2025 Committee term and introduce a new charge from FSIS on genomic characterization of pathogens. Also, the Committee will continue working on the response to the U.S. Food and Drug Administration's (FDA) *Cronobacter spp.* in Powdered Infant Formula charge.

DATES: The full Committee will hold a virtual public plenary meeting on Tuesday, November 14, 2023, from 10:00 a.m. to 12:00 p.m. Concurrent virtual public subcommittee meetings will be held on Tuesday, November 14, 2023, from 1:00 p.m. to 4:30 p.m. As well as on Wednesday, November 15, 2023, from 1:00 p.m. to 4:30 p.m. and Thursday, November 16, 2023, from 10:00 a.m. to 12:00 p.m., respectively. Attendance is free but pre-registration by Wednesday, November 8, 2023, is requested.

The deadline to submit written comments is Wednesday, November 8, 2023.

ADDRESSES: The plenary and subcommittee meetings will be held virtually using Webex. Attendees must pre-register at *https://ems8.intellor.com/?do=register&t=1&p=849304* to receive a join link, dial-in number, access code, and unique Attendee ID for the plenary and subcommittee meetings. Persons interested in providing comments at the Tuesday, November 14, 2023, plenary meeting should indicate so when registering. Comments will be limited to three minutes per speaker.

An American Sign Language interpreter will be present during the meeting and attendees will also have the option to turn on closed captions.

Written comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

Mail: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

Hand- or Courier-Delivered Submittals: Deliver to 1400

Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the agency name and docket number FSIS–2023–0024. Comments made in response to the docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 937–4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250.

Agenda: FSIS will finalize an agenda on or before the meeting date and post it on the FSIS web page at *https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings.* Please note that the meeting agenda is subject to change; thus, sessions could end earlier or later than anticipated. Please plan accordingly if you would like to attend this meeting or participate in the public comment period.

The official transcript of the November 14, 2023 plenary meeting, when it becomes available, will be posted on FSIS' website at *https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collectionand-reports/nacmcf/meetings/nacmcfmeetings.*

FOR FURTHER INFORMATION CONTACT: Kristal Southern, USDA, FSIS, Office of Public Health Science, 1400 Independence Avenue SW, Room 1128, Washington, DC 20250; Email: *NACMCF@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The charter for the NACMCF is available for viewing at *https://www.fsis.usda.gov/policy/advisory-committees/national-advisory-committee-microbiological-criteria-foods-nacmcf.* The NACMCF provides impartial scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides scientific advice and recommendations to the Departments of Commerce and Defense. The Committee reports to the Secretary of Agriculture through the Under Secretary for Food Safety, the Committee's Chair, and to the Secretary of Health and Human Services through the Assistant Secretary for Health, the Committee's Vice-Chair. Currently, Dr. Emilio Esteban, Under Secretary for Food Safety, USDA, is the Committee Chair; Dr. Donald Prater, Acting Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Dr. Kristal Southern, USDA FSIS, is the Director of the NACMCF Secretariat and Designated Federal Officer.

NACMCF documents and comments posted on the FSIS website are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy. To meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, etc.). These modifications only affect the internet copies of the documents. Copyrighted documents will not be posted on FSIS' website but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.* FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/forms/electronic-forms,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: October 19, 2023.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2023–23636 Filed 10–25–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance for FNS Quick Response Surveys (FNS QRS)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection to conduct short, quick-turnaround surveys of State and local agencies providing food, education, and other services in the Supplemental Nutrition Assistance Program, Child Nutrition Programs, and Supplemental Nutrition and Safety Programs administered at the federal level by the Food and Nutrition Service (FNS). These programs include the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); National School Lunch Program (NSLP); School Breakfast Program (SBP); Special Milk Program (SMP); Fresh Fruit and Vegetable Program (FFVP); Summer Food Service Program (SFSP); Summer EBT (SEBT); Team Nutrition; the Patrick Leahy Farm to School Program; the Child and Adult Care Food Program (CACFP); USDA Foods in Schools; Food Distribution Program on Indian Reservations (FDPIR); The Emergency Food Assistance Program (TEFAP); and the Commodity Supplemental Food Program (CSFP).

DATES: Written comments must be received on or before December 26, 2023.

ADDRESSES: Comments may be submitted via email to *conor.mcgovern@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Conor McGovern at *conor.mcgovern@usda.gov,* 703–457–7740.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Generic Clearance for FNS Quick Response Surveys (FNS QRS).

Form Number: N/A.

OMB Number: 0584–0613.

Expiration Date: 05/31/2024.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) intends to request the renewal of a generic clearance that allows FNS to conduct short, quick-turnaround surveys of State, local, and Tribal agencies and businesses that receive food, funds, and nutrition information through programs administered by FNS. This generic clearance enables FNS to better meet the goals of Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,* by allowing FNS to expeditiously gather information from program operators to improve and refine customer experience and service delivery.

These programs include the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); National School Lunch Program (NSLP); School Breakfast Program (SBP); Special Milk Program (SMP); Fresh Fruit and Vegetable Program (FFVP); Summer Food Service Program (SFSP); Summer Electronic Benefit Transfer (SEBT); the Patrick Leahy Farm to School Program; Team Nutrition; the Child and Adult Care Food Program (CACFP); USDA Foods in Schools; Food Distribution Program on Indian Reservations (FDPIR); The Emergency Food Assistance Program (TEFAP); and the Commodity Supplemental Food Program (CSFP).

Legislation authorizing these programs requires operators to cooperate with USDA program research and evaluation activities. Traditionally, FNS conducts large, program-specific studies to collect information on numerous features of each program. Such studies often take several years to complete. Quick response surveys provide a system for rapidly collecting current information on a specific feature or issue, and, therefore, enable FNS to administer the programs more effectively.

The data collection activities under this clearance will include: (1) sample frame data collections and (2) quick-response surveys. The sample frame data collections are used to request contact information from State agencies for the local program operators within their purview. The quick-response survey data collections will be used to survey key administrators of FNS programs at the State, local, and site level to answer policy and implementation questions.

Following standard OMB requirements, FNS will submit a change request to OMB for each data collection activity undertaken under this generic clearance. The respondents will be identified at the time that each change request is submitted to OMB. FNS will provide OMB with the instruments and supporting materials describing the research project and specific pre-testing activities.

This revision makes some changes to the information collection as previously approved. SNAP, Summer EBT, and the Patrick Leahy Farm to School Program have been added as separate programs, thereby expanding it to all current FNS programs. The type of information to be collected and the methods of collection will remain broadly the same. In this revision, FNS has changed the manner in which we account for burden on respondents. Previously, we requested burden for exactly one survey per program per year at the state and local levels. This had several downsides. First, it overestimated the burden of the clearance itself on many respondent groups, as some programs are surveyed more commonly than others. Second, it reduced flexibility for FNS to perform multiple surveys for a given program when there were significant policy or

operational needs. In making these revisions, we still take steps to ensure that a given individual respondent receives no more than three surveys about the same program each year, with an average of one per program per year expected.

Affected Public: State, Local and Tribal Governments and Businesses. State, Local and Tribal government respondents will include: (1) State Program Directors, including SNAP State agency directors, WIC State Agency directors and nutrition education and breastfeeding coordinators, directors of the Child Nutrition programs (NSLP, SBP, FFVP, SFSP, SEBT, Farm to School, CACFP), directors of State Distributing Agencies (CSFP, TEFAP, USDA Foods in Schools), and FDPIR State Agencies and Indian Tribal Organizations; and (2) local-level program administrators, including Local WIC Agencies and Sites, School Food Authorities (SFAs), Schools, SFSP Sponsors and Sites, USDA Foods in Schools Local Agencies and Providers, TEFAP Eligible Recipient Agencies (ERAs) and Emergency Food Organizations (EFOs), CSFP Local Agencies, etc. Business respondents include not-for-profit local WIC Sites, not-for-profit SFSP Sponsors and Sites, for-profit and not-for-profit CACFP Sponsors and Providers, not-for-profit TEFAP ERAs and EFOs, not-for-profit CSFP Local Agencies, etc.

Estimated Number of Respondents: The total estimated number of annual respondents is 41,346. This includes all State Program Directors (675 total) and a sample of local-level program administrators from local government agencies (20,391 total) and businesses (20,280 total). The total number of respondents includes an estimated 34,213 total responsive entities as well as 7,133 local program administrators from both local agencies (3,479 total) and (3,654 total) whom FNS expects will not respond to the information collection request.

Estimated Number of Responses per Respondent: Approximately once each year, State agencies responsible for a program will be asked to update contact information for their respective local agencies as part of the sample frame data collection. Any single individual respondent, State agency or local program operator, will receive no more than three surveys about the same FNS program in a given year, with each expected to receive a single survey in a given year. Including recruitment requests for the surveys, FNS estimates that respondents will average 2 responses per year.

Estimated Total Annual Responses: 82,692.

Estimated Time per Response: The estimated time of response ranges from 3 minutes (0.05 hours) to 1 hour for respondents and 1 minute (.02 hours) for non-respondents, depending on the data collection activity, as shown in the table below. The average estimated time across all responses is approximately 14 minutes (0.24 hours).

Estimated Total Annual Burden on Respondents: The estimated total annual burden is 19,744 hours, for a total of 59,231 over the clearance period. See the table below for estimated total annual burden for each type of collection and respondent.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

Respondent Type	Respondent	Type of survey instruments	Sample Size	Responsive					Non-Responsive					All
				Number of respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Total Annual hour burden
State/local government	State agency	Sampling frame request	675	675	1	675	1.00	675.00	0	1	0	0.02	0.00	675.00
	State agency	Quick response survey	675	675	1	675	0.50	337.50	0	1	0	0.02	0.00	337.50
	Local agency	Recruitment email	20,391	16,912	1	16,912	0.05	845.60	3,479	1	3,479	0.02	69.58	915.18
	Local agency	Quick response survey	20,391	16,912	1	16,912	0.50	8,456.00	3,479	1	3,479	0.02	69.58	8,525.58
Business	Local agency	Recruitment email	20,280	16,626	1	16,626	0.05	831.30	3,654	1	3,654	0.02	73.08	904.38
	Local agency	Quick response survey	20,280	16,626	1	16,626	0.50	8,313.00	3,654	1	3,654	0.02	73.08	8,386.08
	TOTAL		41,346	34,213	6	68,426	0.28	19,458.40	7,133	8	14,266	0.02	285.32	**19,743.72**

[FR Doc. 2023–23660 Filed 10–25–23; 8:45 am]
BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS–23–WATER–0013]

Notice of Funding Opportunity for Calendar Year 2022 Disaster Circuit Rider Technical Assistance Grants Program; Water and Environmental Programs; Extension of Submission Deadline

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; extension of submission deadline.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) mission area of the United States Department of Agriculture (USDA), announced its acceptance of applications under the Calendar Year (CY) 2022 Disaster Circuit Rider Technical Assistance (CY 2022 Disaster CRTA) Grants Program in a Notice of Funding Opportunity (NOFO) in the **Federal Register** on September 28, 2023. This notice is extending the date by which applications can be submitted through *grants.gov*.

DATES: The deadline for submissions regarding the NOFO published September 28, 2023, at 88 FR 66797, is extended from October 30, 2023, to November 7, 2023.

ADDRESSES: Applications and supporting information must be submitted electronically through *Grants.gov* via *https://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Penny Douglas, Grant Manager, Water and Environmental Programs, RUS, USDA, by phone at (202) 253–0504 or by email at *Water-RD@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Agency is extending the deadline for submissions regarding the CY 2022 Disaster CRTA Grant Program NOFO published September 28, 2023, at 88 FR 66797, from October 30, 2023, to November 7, 2023. This change is being made due to *grants.gov* completing an upgrade that will have the system unavailable from October 28 to October 31, 2023.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–23700 Filed 10–24–23; 4:15 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD488]

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 Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, November 13, 2023, starting at 1 p.m. and continuing through 2:30 p.m. on Tuesday, November 14, 2023. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This will be an in-person meeting with a virtual option. Monitoring Committee members, other invited meeting participants, and members of the public will have the option to participate in person at the Loews Philadelphia Hotel, 1200 Market Street, Philadelphia, PA, or virtually via Webex webinar. 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: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to discuss 2024–2025 recreational management measures for summer flounder and scup and 2024 recreational management measures for black sea bass. The Monitoring Committee will follow the process prescribed in the fishery management plan to recommend the percent change in harvest the measures should achieve for each species. The Monitoring Committee will also recommend the appropriate coastwide or federal waters recreational management measures (*e.g.,* possession limits, fish size limits, seasons) for all three species. The Monitoring Committee will also discuss and provide recommendations on the commercial summer flounder minimum mesh regulations and exemptions (*i.e.,* minimum mesh size regulations, Small Mesh Exemption Program, and the flynet exemption), and review any analyses conducted by staff and a contractor as well as feedback received from industry.

Special Accommodations

The meetings are 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: October 23, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23683 Filed 10–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD466]

Fisheries of the Gulf of Mexico, Atlantic, and U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 77 Post Review Workshop Webinar for Highly Migratory Species (HMS) Hammerhead Sharks.

SUMMARY: The SEDAR 77 assessment process of HMS hammerhead sharks will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop, and webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 77 Post Review Workshop webinar will be held November 13, 2023, from 12 p.m. to 6 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Post Review Workshop webinar are as follows: participants will discuss and review outstanding assessment presentations and discuss data issues remaining from the Review Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23679 Filed 10–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD484]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will hold a meeting. See **SUPPLEMENTARY INFORMATION** for agenda.

DATES: The meetings will be held on Monday, November 13, 2023 through Friday, November 17, 2023, from 9 a.m. to 5 p.m., PDT.

ADDRESSES: The meetings will be hybrid meetings. The in-person component of the meetings will be held at the Alaska Fishery Science Center in the Traynor Room (2076) and Room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115. If you plan to attend in-person you need to notify Sara Cleaver (*sara.cleaver@noaa.gov*) or Diana Stram (*diana.stram@noaa.gov*) at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/3018.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; phone: (907) 271–2809; email: *sara.cleaver@noaa.gov* or Diana Stram, Council staff; email *diana.stram@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, November 13, 2023, Through Friday, November 17, 2023

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams will compile and review the annual BSAI and GOA Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, and recommend final groundfish Over Fishing Limits (OFLs) and Allowable Biological Catches (ABCs) for 2024/2025. The Plan Teams will also review the Economic Report and the Ecosystem Status Reports. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3018* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3018.*

Public Comment

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/3018.*

Dated: October 23, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23682 Filed 10–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD480]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of South Atlantic Fishery Management Council's (Council) System

Management Plan (SMP) Workgroup meeting via webinar.

SUMMARY: The Council will hold a meeting of the SMP Workgroup via webinar on November 15, 2023. The workgroup will discuss recent research and evaluation tools of the Spawning Special Management Zones (SMZs). This meeting is the first meeting of the workgroup to develop recommendations on the management of the Spawning SMZs.

DATES: The meeting will be held on Wednesday, November 15, 2023, from 9 a.m. until 3 p.m.

ADDRESSES:

Meeting address: The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/events/nov-2023-system-management-plan-workgroup-meeting/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The SMP Workgroup is an advisory group for the Council that reviews actions items, evaluates managed areas, and reviews management of managed areas recommended by the Council. The workgroup will meet to discuss components of SMPs for the Spawning SMZs established by the Council. The workgroup is responsible for development of a report to the Council with recommendations. Components of the report include background information on managed areas; biological and habitat monitoring; socio-economic factors; enforcement and compliance; research recommendations; and outreach.

Agenda items for this meeting include: an overview on why the Spawning SMZs were established, the SMP for the Spawning Special Management Zones, recent research conducted in the areas, and evaluations for trends and management of the areas. The workgroup will discuss the evaluation for the area and how best to develop recommendations. The workgroup will also hold elections at the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23681 Filed 10–25–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD469]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of South Atlantic Fishery Management Council's (Council) Seminar Series presentation via webinar.

SUMMARY: The Council will host a presentation from NOAA Fisheries on a Marine Recreational Information Program Fishing Effort Survey pilot study results and next steps via webinar.

DATES: The webinar presentation will be held on Tuesday, November 14, 2023, from 1 p.m. until 2:30 p.m.

ADDRESSES:

Meeting address: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-seminar-series/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation from NOAA Fisheries on a Marine Recreational Information Program—Fishing Effort Survey pilot study where potential bias in the recreational fishing effort estimate was discovered. The presentation will describe key findings of the pilot study and describe next steps to study the potential bias and potential changes to the survey. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–23680 Filed 10–25–23; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0745; FR ID 180428]

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 26, 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: 3060–0745.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 50 respondents; 1,536 responses.

Estimated Time per Response: 0.25—5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in sections 1, 4(i), and 204(a)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 151,154(i), and 204(a)(3).

Total Annual Burden: 4,054 hours.

Total Annual Cost: $611,800.

Needs and Uses: This collection will be submitted as an extension to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

In CC Docket No. 96–187, the Commission adopted measures to streamline tariff filing requirements for local exchange carriers (LECs) pursuant to the Telecommunications Act of 1996. In order to achieve a streamlined and deregulatory environment for LEC tariff filings, LECs are required to file tariffs electronically. The information collected under the electronic filing program will facilitate access to tariffs and associated documents by the public, as well as by state and federal regulators. Ready electronic access to carrier tariffs will also facilitate the compilation of aggregate data for industry analysis purposes without imposing new reporting requirements on carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23662 Filed 10–25–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9144–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published in the 3-month period, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	William Parham	(410) 786–4669
VII Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749
VIII American College of Cardiology—National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786–2749
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby, MA	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786–3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners

(NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: November 14, 2022 (87 FR 68161), February 1, 2023 (88 FR 6729), May 12, 2023 (88 FR 30752) and August 4, 2023 (88 FR 51814). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (July through September 2023)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual Medicare Benefit Policy, Chapter 15, Section 110.8 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Benefit Category Determinations (CMS-Pub. 100-02) Transmittal No. 12171.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
	None
Medicare Benefit Policy (CMS-Pub. 100-02)	
12147	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12171	Update to Pub. 100-02 Medicare Benefit Policy, Chapter 15, Section 110.8 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Benefit Category Determinations
Medicare National Coverage Determination (CMS-Pub. 100-03)	
12183	National Coverage Determination (NCD) 280.16 Power Seat Elevation Equipment on Power Wheelchairs Durable Medical Equipment Reference List (Effective May 16, 2023) Seat Elevation Equipment (Power Operated) on Power Wheelchairs (Effective May 16, 2023)
Medicare Claims Processing (CMS-Pub. 100-04)	
12121	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
12122	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System

12125	Enforcing Billing Requirements for Intensive Outpatient Program (IOP) Services with New Condition Code 92 Intensive Outpatient Program Services Special Intensive Outpatient Program Billing Requirements for Hospitals, Community Mental Health Centers, and Critical Access Hospitals Bill Review for Intensive Outpatient Program Services Received in Community Mental Health Centers (CMHC) Professional Services Related to Intensive Outpatient Program Outpatient Mental Health Treatment Limitation for Intensive Outpatient Program Services Reporting Service Units for Intensive Outpatient Program Line Item Date of Service Reporting for Intensive Outpatient Program Payment for Intensive Outpatient Program Services
12130	Internet Only Manual Update, Pub. 100-04, Chapter 3 (Inpatient Hospital Billing), Sections 90.1.2 - Billing for Kidney Transplant and Acquisition Services, 90.2 - Heart Transplants and 90.6- Intestinal and Multi-Visceral Transplants
12132	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12150	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12157	Quarterly Update to the End-Stage Renal Disease Prospective Payment System (ESRD PPS)
12164	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12165	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12170	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12173	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for Fiscal Year (FY) 2024
12174	Medicare Part A Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Pricer Update Fiscal Year (FY) 2024
12175	October 2023 Quarterly Update to Healthcare Common Procedure Coding System (HCPCS) Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
12176	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12177	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12185	National Coverage Determination (NCD) 30.3.3 Acupuncture for Chronic Low Back Pain Revised Frequency Edits Acupuncture for Chronic Low Back Pain (cLBP Coverage Requirements HCPCS Coding Associated with Acupuncture and Dry Needling Services Messaging Common Working File (CWF), FISS, and Multi-Carrier System (MCS) Editing
12189	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12190	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
12191	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE
12192	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12193	Update to Hospice Payment Rates, Hospice Cap, Hospice Wage Index and Hospice Pricer for Fiscal Year (FY) 2024
12194	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - October 2023 Update
12195	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12197	Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes Used for Home Health Consolidated Billing Enforcement
12198	January 2024 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
12199	Quarterly Update to Home Health (HH) Grouper
12200	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12201	Annual Clotting Factor Furnishing Fee Update 2024
12202	New Place of Service (POS) Code 27 – "Outreach Site/Street"
12210	Quarterly Update for Clinical Laboratory Fee Schedule (CLFS) and Laboratory Services Subject to Reasonable Charge Payment
12211	Influenza Vaccine Payment Allowances - Annual Update for 2023-2024 Season
12215	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction (MPFSDB) - July 2023 Update
12219	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for January 2024
12221	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) – January 2024
12222	Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Updates for Fiscal Year (FY) 2024
12226	October 2023 Integrated Outpatient Code Editor (I/OCE) Specifications Version 24.3
12227	October 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS)
12228	October Quarterly Update for 2023 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
12229	October 2023 Update of the Ambulatory Surgical Center (ASC) Payment System
12230	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12231	New Dental Specialty Codes for Medicare Physician Specialty Codes
12232	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12234	Fiscal Year (FY) 2024 Inpatient Prospective Payment System (IPPS) and Long-Term Care Hospital (LTCH) PPS Changes Addendum A - Provider Specific File
12239	Instructions To Process Services During Disenrollment From The Programs Of All-Inclusive Care For The Elderly (PACE)
12242	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12246	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 30.0, Effective January 1, 2024
12247	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Secondary Payer (CMS-Pub. 100-05)	

12156	Electronic Correspondence Referral System (ECRS) Updates to the Medicare Secondary Payer (MSP) Inquiry Batch Transactions; New Contractor ID Menu; Updates to the File Upload Process and Submitter Single File Process; Updates to Patient Relationship Codes; New System Vulnerabilities Link and Changes to Identity Management System (IDM) Password Requirements Attachment 1 - ECRS Web User Guide, Software Version 7.3/2023/3 July Attachment 2 - ECRS Web Quick Reference Card Version 7.3/2023/3 July
Medicare Financial Management (CMS-Pub. 100-06)	
12123	Notice of New Interest Rate for Medicare Overpayments and Underpayments -4th Qtr Notification for FY 2023
12136	Updating Overpayment Manual, Chapter 3, Sections 200.2.6-200.4.7, Limitation on Recoupment Extended Repayment Schedules (ERS) with an Overpayment Subject to Limitation on Recoupment Outcome from the Redetermination Decision What to Do After the Validated Reconsideration is Received Actions to Take Upon Receiving a Qualified Independent Contractor (QIC) Notification The Reconsideration Receipt Notice Example Actions to Take after the Reconsideration Decision Recoupment Timeframes and Reconsideration Notices after Decision Reconsideration Notice/Revised Demand Letters Recoupment on Dismissals QIC Remands on Dismissals
12138	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12161	Updating Overpayment Manual, Chapter 3, Sections 200.2.6-200.4.7, Limitation on Recoupment Extended Repayment Schedules (ERS) with an Overpayment Subject to Limitation on Recoupment Outcome from the Redetermination Decision What to Do After the Validated Reconsideration is Received Actions to Take Upon Receiving a Qualified Independent Contractor (QIC) Notification The Reconsideration Receipt Notice Example Actions to Take after the Reconsideration Decision Recoupment Timeframes and Reconsideration Notices after Decision Reconsideration Notice/Revised Demand Letters Recoupment on Dismissals QIC Remands on Dismissals
Medicare State Operations Manual (CMS-Pub. 100-07)	
215	Revisions to the State Operations Manual (SOM) Appendix L - Ambulatory Surgical Centers.
216	Revision to State Operations Manual (SOM) Appendix A- Hospitals
Medicare Program Integrity (CMS-Pub. 100-08)	
12124	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12126	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12127	Updates of Chapters 4, Chapter 8, and Exhibits in Publication (Pub.) 100- 08 Including Adding Additional Clarification to Ongoing Direction Program Integrity Security Requirements Screening Leads Congressional Inquiries Fraud Alerts & HPMS Memos Suspension of Payment
	CMS Approval DME Payment Suspensions (MACs and UPICs) Non-DME National Payment Suspensions (MACs
12128	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12131	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12167	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12168	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12181	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12209	Tenth General Update to Provider Enrollment Instructions in Chapter 10 of CMS Publication (Pub.) 100-08
12217	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
12224	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12225	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12237	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12243	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12244	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12245	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12253	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12255	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
13234	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
12172	Updates to Pub. 100-09, Chapter 6 Beneficiary and Provider Communications Manual, Chapter 6, Provider Customer Service Program Teletypewriter Lines CSR Sign-in Policy Remote Monitoring Provider Outreach and Education Measurement
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
	None
Demonstrations (CMS-Pub. 100-19)	

12152	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
12153	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
12187	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
One Time Notification (CMS-Pub. 100-20)	
12129	2022 Hospice Aggregate Cap Calculation
12133	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12134	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) to Display Additional Information on the Program Integrity Management Reporting (PIMR) Verification Reports
12135	User Enhancement Change Request (UECR): Update the DATAIN VppYUFLU in the Multi-Carrier System (MCS) to Allow for Alphanumeric Provider Specialty Codes
12136	User Enhancement Change Request (UECR): Create New System Control Facility (SCF) Data Elements for Use in the Multi-Carrier System (MCS)
12137	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Accept Alpha Numeric Values in the Division Number (DIV) Field of the Clerk Record and Department Profile Inquiry/Update Screens
12138	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) Primary Function Keys (PF) for the Provider Enrollment Screens
12139	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) Checks Issued to Payee Screen
12140	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) Additional Documentation Request (ADR) – ADS History Screen
12141	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) to Display the Internal Control Number (ICN) on the H99RBMSD and H99RBMSI Reports
12142	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Allow Punctuation on the Beneficiary Name, Sex, Date of Birth Update (BN Transaction)
12143	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Display Edit/Audit and CWF Error Code Override Information on the MCS Desktop Tool (MCSDT)
12144	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Accept Additional Payee Identification Code Qualifiers for Third Party Payee (TPP) Provider Level Balancing (PLB) Code L3
12145	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Accept Additional Payee Identification Code Qualifiers for Third Party Payee (TPP) Provider Level Balancing (PLB) Code L3
12146	Patient Driven Payment Model (PDPM) Corrections to Claims Processing Edits
12149	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12151	Remittance Advice (RA) Changes due to Durable Medical Equipment Medicare Administrative Contractors (DME MACs) Transition to Healthcare Integrated General Ledger Accounting System (HIGLAS)
12154	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12155	Implementation to Expand Monetary Amount Fields Related to Billing and Payment to Accommodate 10-Digits in Length ($99,999,999.99) – Phase 1
12158	Fiscal Intermediary Shared System (FISS) User Enhancement Change Request (UECR) - Enhancement to the Duplicate Payment Process (DPP)
12159	Fiscal Intermediary Shared System (FISS) User Enhancement Change Request (UECR) - Add Inquiry Access for the Holiday Update Screen
12160	Report of Hospice Election for Part D
12161	Fiscal Intermediary Shared System (FISS) - Create Utility to Update Reason Code File to Remove Deleted Codes
12162	Fiscal Intermediary Shared System (FISS) - Delete Obsolete Reason Codes
12163	Fiscal Intermediary Shared System (FISS) - Correct CMS Standard on Reason Code File
12166	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12169	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12178	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Include Additional Documentation Request (ADR) number on Adjustments
12179	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Copy Tables and Screens from User Acceptance Testing (UAT) Regions to Production - Phase
12180	Create Additional Location/Statuses in ViPS Medicare System (VMS) that are Excluded from Claims Processing Timeliness (CPT)
12184	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)—January 2024 Update
12186	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12188	Prior Authorization (PA) Changes to Implement the Inpatient Rehabilitation Facility (IRF) Review Choice Demonstration (RCD)
12196	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Cancellation Process Phase 2
12203	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12204	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12205	Remittance Advice (RA) Changes due to Durable Medical Equipment Medicare Administrative Contractors (DME MACs) Transition to Healthcare Integrated General Ledger Accounting System (HIGLAS)
12207	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)--October 2023 Update
12208	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
12212	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Expand Ability to Search Through the Revenue Lines and Apply User Defined Quantity Limits to One or More Services - Full Agile Pilot
12213	User Enhancement Change Request (UECR) - Update the Multi-Carrier System (MCS) to Display Edit/Audit and CWF Error Code Override Information on the MCS Desktop Tool (MCSDT)
12214	OTC COVID-19 Tests
12218	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12220	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12223	User Enhancement Change Request (UECR): Create New System Control

	Facility (SCF) Data Elements for Use in the Multi-Carrier System (MCS)
12235	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12240	Patient Responsibility Reporting with Medicare Secondary Payer (MSP)
12241	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12251	Revision to Implementation of Consolidated Appropriations Act (CAA) of 2023, Section 4143: Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
	None
State Payment of Medicare Premiums (CMS-Pub.100-24)	
	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

For questions or additional information, contact Ismael Torres (410-786-1864).

Addendum II: Regulation Documents Published in the Federal Register (July through September 2023)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (July through September 2023)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings.

For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (July through September 2023)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/.

For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Seat Elevation Equipment (Power Operated) on Power Wheelchairs	NCD 280.16	R13277	08/03/2023	05/16/2023

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (July through September 2023)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (July through September 2023)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain.

For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (July through September 2023)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Kaiser Foundation Hospital Roseville 1600 Eureka Roseville, CA 95661	050772	08/01/2023	CA
Jersey City Medical Center 355 Grand Street Jersey City, NJ 07302	310074	08/22/2023	NJ
The following facilities have editorial changes (in bold).			
FROM: University of Michigan Health System **TO: The Regents of the University of Michigan** 1500 E. Medical Center Drive Ann Arbor, MI 48109-0060	230046	08/19/2005	MI
FROM: The Methodist Hospital **TO: Houston Methodist Hospital** 6565 Fannin Street Houston, TX 77030	450358	07/07/2005	TX

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (July through September 2023)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (July through September 2023)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27.

CMS published three proposed guidance documents on June 22, 2023 to provide a framework for more predictable and transparent evidence development and encourage innovation and accelerate beneficiary access to new items and services. The documents are available at:

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=35&docTypeId=1&sortBy=title&bc=16

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=34&docTypeId=1&sortBy=title&bc=16

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=33&docTypeId=1&sortBy=title&bc=16

For questions or additional information, contact Lori Ashby, MA (410 786 6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (July through September 2023)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov .

For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (July through September 2023)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission

tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (July through September 2023)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities have editorial changes (in bold).				
Heart Hospital of Austin, A campus of St. David's Medical Center 3801 N. Lamar Boulevard Austin, TX 78756	45-0431	07/27/2020	**07/27/2023**	TX
Other information: DNV-GL ID #: C614702 Previous Re-certification Dates: 07/27/2020				
Abbott Northwestern Hospital 800 East 28th Street Minneapolis, MN 55407 Other information: Joint Commission ID # 8149 Previous Re-certification Dates: 11/16/2010; 11/29/2012; 11/18/2014; 12/06/2016; 2/13/2019; 07/28/2021	240057	11/17/2010	**07/15/2023**	MN
Cleveland Clinic 9500 Euclid Avenue NA-4 Cleveland, OH 44195 Other information: Joint Commission ID # 7001 Previous Re-certification Dates: 10/28/2008;11/23/2010;12/11/2012;12/02/2014;11/08/2016;12/12/2018;08/05/2021	360180	12/03/2003	**05/17/2023**	OH
FROM: JFK Medical Center **TO: HCA Florida JFK Hospital** 5301 South Congress Avenue Atlantis, FL 33462 Other information: Joint Commission ID # 6836 Previous Re-certification Dates: 01/24/2017; 3/6/2019; 03/03/2021	100080	01/25/2017	**05/10/2023**	FL
District Hospital Partners, LP 900 23rd Street, NW Washington, DC 20037 Other information: Joint Commission ID # 6310 Previous Re-certification Dates: 9/12/2018; 07/10/2021	090001	09/12/2018	**04/20/2023**	DC
St. Elizabeth Healthcare 1 Medical Village Drive Edgewood, KY 41017 Other information: DNV ID #: C621261	180035	08/12/2020	**08/12/2023**	KY

Previous Re-certification Dates: 08/12/2023				
AMITA Health Alexian Brothers Medical Center 800 Biesterfield Road Elk Grove Village, IL 60007 Other information: DNV ID #: C592324 Previous Re-certification Dates: 07/21/2020	14-0258	07/21/2020	**07/21/2023**	IL
Brigham and Women's Hospital 75 Francis Street Boston, MA 02115 Other information: Joint Commission ID# 5503 Previous Re-certification Dates: 11/04/2008; 12/09/2010; 12/07/2012; 11/07/2014; 12/13/2016;2/27/2019; 07/10/2021	220110	01/09/2004	**06/14//2023**	MA
Henry Ford Health System 2799 West Grand Boulevard Detroit, MI 48202 Other information: Joint Commission ID # 7485 Previous Re-certification Dates: 10/30/2008; 10/21/2010; 11/06/2012; 10/28/2014; 12/20/2016; 3/13/2019; 07/29/2021	230053	01/06/2004	**06/16/2023**	MI
Catholic Health Initiatives - Iowa, Corp. 1111 6th Avenue Des Moines, IA 50314 Other information: Joint Commission ID # 8248 Previous Re-certification Dates: 01/06/2015; 02/14/2017; 3/27/2019; 07/01/2021	160083	01/06/2015	**06/03/2023**	IA
NorthShore University Health System 2650 Ridge Ave Evanston, IL 60201 Other information: Joint Commission ID # 7343 Previous Re-certification Dates: 10/25/2016; 11/15/2018; 08/06/2021	140010	08/06/2016	**06/08/2023**	IL
FROM: University Health Services, dba University Hospital **TO: Piedmont Augusta Hospital** 1350 Walton Way Augusta, GA 30901 Other information: DNV ID #: C602742 Previous Re-certification Dates: 08/16/2017; 08/28/2020	110028	08/16/2017	**08/22/2023**	GA
Duke University Health System, Inc 2301 Erwin Road Durham, NC 27710 Other information: Joint Commission ID # 6490 Previous Re-certification Dates: 01/16/2009; 06/30/2011;06/04/2013; 05/05/2015; 06/13/2017; 08/21/2019; 09/22/2021	340030	10/31/2003	**08/23/2023**	NC
The following facilities were removed this quarter.				
Sunrise Hospital & Medical Center 3186 S. Maryland Parkway Las Vegas, NV 89109 Other information: DNV ID #: C556920 Previous Re-certification Dates: 09/10/2019	290003	09/10/2019	09/10/2022	NV
Medical Center Navicent Health 777 Hemlock Street Macon, GA 31201 Other information:	110107	11/08/2012	10/13/2020	GA

DNV-GL # 492949-2020-VAD Previous Re-certification Dates: 11/14/2018; 10/21/2014; 11/22/2016				

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (July through September 2023)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. For the purposes of this quarterly notice, there are no additions and deletions to a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (July through September 2023)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (July through September 2023)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2023–23652 Filed 10–25–23; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4416]

Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities; 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 ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities.'' FDA is issuing this draft guidance to describe how we request and conduct voluntary remote interactive evaluations at facilities where drugs are manufactured, processed, packed, compounded, or held, and at facilities covered under FDA's bioresearch monitoring program. FDA may consider the use of a remote interactive evaluation for any of the inspection program areas described in the guidance. FDA is also announcing the withdrawal of the guidance entitled ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities During the COVID–19 Public Health Emergency.''

DATES: Submit either electronic or written comments on the draft guidance by December 26, 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–4416 for ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities.'' 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; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. 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: Tina Kiang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4374, Silver Spring, MD 20993–0002, 301–796–6487; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or CVM at *AskCVM@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities.'' FDA is issuing this draft guidance to describe how we request and conduct voluntary remote interactive evaluations at: (1) facilities where drugs are manufactured, processed, packed, or held; (2) facilities covered under FDA's bioresearch

monitoring program; and (3) outsourcing facilities registered under section 503B (21 U.S.C. 356b) of the FD&C Act. FDA may consider the use of a remote interactive evaluation for any of the inspection program areas described in the draft guidance.

During the Coronavirus Disease 2019 (COVID–19) pandemic, FDA expanded our use of alternative tools for evaluating drug manufacturing facilities to support regulatory decision-making. When an inspection was not feasible or practical because of the public health emergency (PHE), FDA used other available tools and information to support regulatory decisions and oversight of facilities. FDA announced its policy for using these alternative tools in a guidance entitled ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities During the COVID–19 Public Health Emergency'' posted in April 2021 and announced in the **Federal Register** on May 27, 2021 (86 FR 28627) (''2021 COVID–19 Remote Interactive Evaluations Guidance''). FDA issued the guidance to communicate its policy for the duration of the COVID–19 PHE declared by the Secretary of Health and Human Services (HHS) on January 31, 2020, including any renewals made by the HHS Secretary in accordance with section 319(a)(2) of the Public Health Service Act (42 U.S.C. 247d(a)(2)). Furthermore, in the **Federal Register** of March 13, 2023 (88 FR 15417) FDA listed the: (1) guidances that will no longer be effective with the expiration of the PHE declaration, (2) guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration to provide a period for stakeholder transition and then would no longer be in effect, and (3) guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration during which time FDA planned to further revise the guidances. The 2021 COVID–19 Remote Interactive Evaluations Guidance is included in the latter category and was revised to remain in effect for 180 days post expiration of the PHE declaration. Although the HHS Secretary of has announced that the COVID–19 public health emergency declaration has ended and FDA has largely resumed inspections, FDA has determined that continued use of alternative tools, including remote interactive evaluations, based on risk and program needs, will enhance our ability to assess facilities.

This draft guidance describes the various remote interactive tools we may request to use to conduct an evaluation. In this draft guidance, we refer to our use of any combination of these interactive tools as a *remote interactive evaluation.* FDA may request to conduct a remote interactive evaluation prior to or following other types of regulatory oversight activities (*e.g.,* an inspection or a request for records or other information). In preparing this draft guidance, FDA considered comments received on the 2021 COVID–19 Remote Interactive Evaluations Guidance.

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 ''Remote Interactive Evaluations of Drug Manufacturing and Bioresearch Monitoring Facilities.'' 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.

FDA also is announcing that the 2021 COVID–19 Remote Interactive Evaluations Guidance will be withdrawn upon publication of this draft guidance. FDA has determined that the 2021 COVID–19 Remote Interactive Evaluations Guidance is no longer needed because this new draft guidance is available and its recommendations, when finalized, will be applicable outside the context of the COVID–19 public health emergency.

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). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 58 pertaining to good laboratory practices have been approved under OMB control number 0910–0119. The collection of information pertaining to current good manufacturing practices have been approved under OMB control number 0910–0139. The collections of information relating to the registration of human drug compounding outsourcing facilities under section 503B of the FD&C Act and associated fees under section 744K of the FD&C Act (21 U.S.C. 379j–62) have been approved under OMB control number 0910–0776. The collections of information pertaining to human drug compounding under sections 503A (21 U.S.C. 356a) and 503B of the FD&C Act have been approved under OMB control number 0910–0800. The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130.

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/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: October 23, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–23677 Filed 10–25–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 15, 2023.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240–669–5199, *cerritem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23626 Filed 10–25–23; 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 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 on Drug Abuse.

The meeting will be held as a virtual meeting and is open to the public, as indicated below. Individuals who plan to view the virtual meeting and need special assistance such as sign language interpretation or other reasonable accommodations to view the meeting, should notify Dr. Jeanette Marketon via email at *jeanette.marketon@nih.gov* five days 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/*).

A portion of 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 intramural programs and projects as well as the grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with intramural programs and projects as well as the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 6, 2024.

Closed: 10:30 a.m. to 11:45 a.m. *Agenda:* To review and evaluate grant applications.

Closed: 11:45 a.m. to 12:15 p.m. *Agenda:* Report to Council from the NIDA Board of Scientific Counselors (BSC).

Open: 12:45 p.m. to 5:00 p.m. *Agenda:* Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09D08, 11601 Landsdown Street, Bethesda, MD 20852 301–443–6480 *sweiss@nida.nih.gov.*

Contact Person: Jeanette Marketon, Ph.D., Director, Office of Extramural Policy, Division of Extramural Research Office of Extramural Policy, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09C68, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–5239 *jeanette.marketon@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to Dr. Jeanette Marketon at *jeanette.marketon@nih.gov.* 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: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(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: October 20, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23628 Filed 10–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 20, 2023.

Time: 9:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Room RML 31/3118, Hamilton, MT 59840 (Virtual Meeting).

Contact Person: Kristin L. McNally, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Room RML 31/3118, Hamilton, MT 59840, *mcnallyk@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23627 Filed 10–25–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA—2023–0029; OMB No. 1660–0016]

Agency Information Collection Activities: Proposed Collection, Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a renewal of

a currently approved information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

DATES: Comments must be submitted on or before December 26, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0029. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used to submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Koper, Emergency Management Specialist, Engineering Services Branch, Risk Management Directorate, DHS/FEMA, at *Brian.Koper@fema.dhs.gov* or 202–733–7859. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. Communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur (*see* 44 CFR 65.3). Communities are provided the right to submit technical information when inconsistencies on maps are identified (*see* 44 CFR 65.4). In order to revise the Base (one-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations outline the data that must be submitted for these requests (*see* 44 CFR part 65). This collection serves to provide a standard format for the general information requirements outlined in the NFIP regulations and helps establish an organized package of the data needed to revise NFIP maps.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs.

Type of Information Collection: Renewal of a currently approved information collection.

OMB Number: 1660–0016.

FEMA Forms: FEMA Form FF–206–FY–21–100 (formerly 086–0–27), Overview & Concurrence (Form 1); FEMA Form FF–206–FY–21–101 (formerly 086–0–27A), Riverine Hydrology & Hydraulics (Form 2); FEMA Form FF–206–FY–21–102 (formerly 086–0–27B), Riverine Structures (Form 3); FEMA Form FF–206–FY–21–103 (formerly 086–0–27C), Coastal Analysis (Form 4); FEMA Form FF–206–FY–21–104 (formerly 086–0–27D), Coastal Structures (Form 5); and FEMA Form FF–206–FY–21–105 (formerly 086–0–27E), Alluvial Fan Flooding (Form 6).

Abstract: The forms in this information collection are used to determine if the collected data will result in the modification of Base Flood Elevations (BFEs), Special Flood Hazard Area (SFHA), or floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the National Flood Insurance Program (NFIP) maps. These maps will be used for flood insurance determinations and for floodplain management purposes.

Affected Public: State, Local and Tribal Government, Business or Other For-Profit, Individuals or Households.

Estimated Number of Respondents: 5,589.

Estimated Number of Responses: 5,589.

Estimated Total Annual Burden Hours: 14,633.

Estimated Total Annual Respondent Cost: $1,082,824.

Estimated Respondents' Operation and Maintenance Costs: $26,430,000.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $26,240.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–23667 Filed 10–25–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[CISA–2023–0026]

Request for Comment on Software Identification Ecosystem Option Analysis

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: Notice; request for information.

SUMMARY: The Cybersecurity and Infrastructure Security Agency (CISA) announces the publication of ''Software Identification Ecosystem Option Analysis,'' which is a white paper on software identification ecosystems and requests public comment on the paths forward identified by the paper and on the analysis of the merits and challenges of the software identifier ecosystems discussed. Additionally, CISA requests input on analysis or approaches currently absent from the paper.

DATES: Written comments are requested on or before December 11, 2023. Submissions received after that date may not be considered.

ADDRESSES: You may send comments, identified by CISA–2023–0026, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://*

www.regulations.gov, including any personal information provided.

Docket: For access to the docket and comments received, please go to *www.regulations.gov* and enter docket number CISA–2023–0026.

To submit comments electronically:

1. Go to *www.regulations.gov,* and enter CISA–2023–0026 in the search field,

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

All submissions, including attachments and other supporting materials, will become part of the public record and may be subject to public disclosure. CISA reserves the right to publish relevant comments publicly, unedited and in their entirety. Do not include personal information, such as account numbers or Social Security numbers, or names of other individuals. Do not submit confidential business information or otherwise sensitive or protected information. All comments received will be posted to *http://www.regulations.gov.* Commenters are encouraged to identify the number of the specific topic or topics that they are addressing.

Commenters may access the ''Software Identification Ecosystem Option Analysis'' white paper on CISA's website at: *https://www.cisa.gov/resources-tools/resources/software-identification-ecosystem-option-analysis.*

FOR FURTHER INFORMATION CONTACT: Allan Friedman, 202–961–4349, *sbom@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using the method identified in the **ADDRESSES** section. All members of the public, including, but not limited to, specialists in the field, academic experts, industry, public interest groups, and those with relevant economic expertise, are invited to comment.

II. Background

Software identification is a key facilitator of effective vulnerability management. Software identifiers are labels for specific versions of software that conform to a defined format. An identifier enables users to track software in relation to other information, such as known vulnerabilities, mitigations for vulnerabilities, lists of approved or disallowed software, and adversary activities. An effective, harmonized software identification ecosystem will facilitate greater automation, inventory visibility, and broader, more effective use of software bills of materials (SBOMs).

The two key requirements for an effective software identification ecosystem are:

1. Timely availability of software identifiers across all software items; and

2. Software identifiers that support both precise identification and grouping of software items.

Key challenges for an effective software identification ecosystem are: (1) uniformly and deterministically generating or locating the identifier for an unknown piece of software (discoverability); (2) distributing unique identifiers for software such that one identifier is not associated with multiple software or versions (precision); and (3) developing a mechanism by which software versions are associated with each other (grouping).

The white paper evaluates the following key criteria for a successful software identifier format:

1. Identifiers all refer to a single variant of a given piece of software and support grouping expressions.

2. Identifiers are built to express a fine level of granularity with support for complete identifier enumeration.

Three software identifier formats are starting points, based on their current use and future potential:

Common Platform Enumeration (CPE): In a system based on CPE, a set of parties generate the software identifiers for the community. Each identifier is generated at a point in time and then distributed to the community.

Package URLs (purl): In a system based on purl, any number of parties may generate software identifiers for the community. purl's existing mechanisms for distributed identification generation also make it feasible as the foundation for a system with a searchable database, however its lack of uniformity presents challenges.

OmniBOR: In a system built on OmniBOR, any party is able to derive a software's identifier from an instance of a piece of software. These identifiers are mechanically generated based on inherent properties of a piece of software, which are available to anyone who has that piece of software. In some cases, these identifiers also contain information about the composition of the software, enabling further identification of its components.

The white paper identifies six paths forward for a software identification ecosystem. Although the paths are individually evaluated, they are not mutually exclusive as a solution.

1. Any party can generate a software's identifier. Inherent identifiers are used.

2. Many parties generate software identifiers. The generators then push the software identifiers to the community through the distribution of the software. Defined software identifiers are used.

3. A central authority oversees and supports the many parties who generate and distribute software identifiers. Defined software identifiers are used.

4. An active management system other than a central authority oversees and supports the many parties that generate inherent identifiers. Defined identifiers are used.

5. In addition to a defined identifier scheme (Paths 2, 3, and 4) there is a standardized structure to characterize unknown software. Correlation is done using fuzzy-matching over the set of provided characteristics.

6. Many parties use multiple defined identifier formats to generate software identifiers.

The ''Software Identification Ecosystem Option Analysis'' white paper identifies paths forward in solving the problem of software identification and explores the benefits and challenges of the various approaches, as well as the community or authority structure that would be needed to develop and sustain the identifier format ecosystem. In doing so, the white paper outlines the requirements and activities necessary to establish a harmonized software identification ecosystem to facilitate greater automation, inventory visibility, and the multi-faceted value proposition of broad adoption of Software Bill of Materials (SBOM).

III. List of Topics for Commenters

Commenters may access the ''Software Identification Ecosystem Option Analysis'' white paper on CISA's website at: *https://www.cisa.gov/resources-tools/resources/software-identification-ecosystem-option-analysis.* CISA seeks comments on the following topics:

(1) Key requirements for an effective software identification ecosystem
(2) Merits and challenges of available software identifier formats
(3) The viability of a system reliant on inherent identifiers or defined identifiers
(4) The necessity of a central authority or other active managing body for a software identifier ecosystem
(5) Methodology for division of software identification responsibilities in an ecosystem where multiple software identifier formats are used
(6) Preferred paths forward

(7) Issues, challenges, or use cases not considered or addressed in the paper
(8) Stakeholders that should be included in deliberation

This notice is issued under the authority of 6 U.S.C. 652 and 659.

Eric Goldstein,

Executive Assistant Director, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–23668 Filed 10–25–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

FY 2023 Senior Executive Service Performance Review Boards

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the FY 2023 Senior Executive Service (SES) Performance Review Boards (PRBs) for the Department of Homeland Security (DHS). The purpose of the PRBs is to make recommendations to the appointing authority (*i.e.,* Component Head) on the performance of senior executives (career, noncareer, and limited appointees), including recommendation on performance ratings, performance-based pay adjustments, and performance awards. The PRBs will also make recommendations on the performance of Transportation Security Executive Service, Senior Level, and Scientific and Professional employees. To make its recommendations, the PRBs will review performance appraisals, initial summary ratings, any response by the employee, and any higher-level official's recommendation.

DATES: This Notice is applicable as of October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Christian Fajardo, Human Resources Specialist, Office of the Chief Human Capital Officer, *christian.fajardo@hq.dhs.gov,* 771–200–0392.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c) and 5 CFR 430.311, each agency must establish one or more PRBs to make recommendations to the appointing authority (*i.e.,* Component Head) on the performance of its senior executives. Each PRB must consist of three or more members. More than one-half of the membership of a PRB must be SES career appointees when reviewing appraisals and recommending performance-based pay adjustments or performance awards for career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

List of Names (Alphabetical Order)

Abdelall, Brenda
Acosta, Juan L
Adamcik, Carol A
Aguilar, Max
Anguilar, Raul
Alfonso-Royals, Angelica
Alles, Randolph D
Almeida, Corina
Anderson, Sandra D
Antalis, Casie
Antognoli, Anthony
Armstrong, Gloria R
Arratia, Juan
Arvelo, Ivan J
Baidwan, Hemant S
Baker, Jeremy D
Baker, Paul E
Barksdale-Perry, Nicole C
Baroukh, Nader
Barrera, Staci A
Basham, Craig
Beattie, Brien
Belcher, Brian C
Berg, Peter B
Berger, Katrina W
Bhagowalia, Sanjeev
Bible, Daniel A
Bible, Kenneth
Blackwell, Juliana J
Bobich, Jeffrey M
Borka, Robert
Boulden, Laurie
Boyd, John
Brane, Michelle
Braun, Jacob H
Breitzke, Erik P
Brewer, Julie S
Bright, Andrea J
Brito, Roberto
Brown, Allen S
Brown, Roger
Browne, Rene E
Brundage, Christopher
Brundage, William
Bryson, Tony
Bucholtz, Kathleen L
Buetow, Zephranie
Bullock, Edna
Burgess, Kenneth
Burks, Atisha
Burriesci, Kelli A
Burrola, Francisco
Bush, William B
Cagen, Steven W
Caine, Jeffrey
Callahan, Mary Ellen
Cameron, Michael K
Canevari, Holly E
Cantu, John
Canty, Rachel E
Cappello, Elizabeth A
Carabin, David
Carnes, Alexandra
Carpio, Philip F
Carraway, Melvin J
Chaleki, Thomas D
Charles, Marcos
Cheatle, Kimberly A
Cheng, Wen-Ting
Clark, Alaina
Clark, Kenneth N
Cleary, Jennifer S
Cline, Richard K
Cloe, David
Clutter, Mason
Cofield, Valerie
Companion, Tod T
Condon, John
Cook, Charles
Cooper, Ntina K
Corle, Ryan
Corrado, Janene M
Cotter, Daniel
Courey, Marc B
Courtney, Paul
Cox, Adam
Cox, Debra S
Cross, Catherine C
Crumpacker, Jim H
Cullen-Dunbar, Susan
Cummings, Melanie
Cunningham, John D
Dainton, Albert J
Dargan, John L
Das, Sharmistha
Davidson, Andrew
Davidson, Johnathan
Davidson, Michael J
Dawson, Inga I
Dawson, Mark
De La O, Jennifer B
Deloatch, Reshea
Dembling, Ross W
DeMella, Jill
DeNayer, Larry C
DiFalco, Frank J
Dobitsch, Stephanie M
Doherty, Stephanie
Donahue, James L
Doran, Thomas J
Dorr, Robert
Doyle, Kerry
Dragani, Nancy J
Dunlap, James
Durst, Casey O
Ederheimer, Joshua A
Edwards, B. Roland
Ellison, Jennifer
Emrich, Matthew D
Enriquez Mcdivitt, Myriam
Escobar Carrillo, Felicia A
Espinosa, Marsha
Evetts, Mark V
Feder, Steven
Fenton, Jennifer M
Ferraro, Nina M
Fitzmaurice, Stacey D
Fitzpatrick, Ronnyka
Fluty, Larry D
Fong, Heather
Franklin, Tami K
Fujimura, Paul
Gabbrielli, Tina
Gaches, Michael
Gantt, Kenneth D
Garcia, Bobby
Gersten, David
Giles, Thomas
Gladwell, Angela R
Glass, Veronica M
Gorman, Chad M
Gountanis, John
Granger, Christopher

Grazzini, Christopher
Griffin, Steven
Griggs, Christine
Guzman, Nicole
Hall, Christopher J
Hammer, Robert
Harris, Melvin
Harris, Steven
Harrison, Kimberly R
Hartigan, Margaret
Harvey, Melanie K
Hatch, Peter
Havranek, John F
Hayes, Lester
Heinz, Todd W
Henderson, Rachelle B
Hess, David A
Higgins, Jennifer B
Highsmith, AnnMarie R
Hinkle-Bowles, Paige
Hippolyte, Tasha
Holtzer, Christopher R
Holzer, James
Hoover, Crinley S
Horyn, Iwona B
Hott, Russell E
Houser, David L
Howard, Kermit
Howard, Tammy
Hudak, Matthew J
Hughes, Clifford T
Hunter, Adam
Huse, Thomas F
Hysen, Eric
Ingalsbe, James
Jackson, Arnold D
James, Michele M
Jenkins, Donna
Johnson, James V
Jones, Keith M
Kahangama, Iranga A
Katz, Evan C
Kaufman, Steven
Kerner, Francine
Kim, Myung
King, Matthew H
King, Tatum S
Klein, Matthew
Koumans, Marnix R
Kronisch, Matthew L
Kuepper, Andrew
Kuhn, Karen A
Kusnezov, Dimitri F
Lambeth, John
Lamm, Clint A
Lanum, Scott F
Larrimore, David
Lawrence, Jamie
Leckey, Eric
Lee, Grace
Lee, Kimya S
Leonard, John P
Letowt, Philip J
Lewis, James
Logan, Christopher P
Loiacono, Adam V
Lorincz, Csaba I
Luke, Adam
Lundgren, Karen E
Lynch, Steven M
Lynum, Kara
Lyon, Shonnie R
Lyons, Todd
Maday, Brian
Madrigal, Frank
Magrino, Christopher
Maher, Joseph B
Maliga, Ted J
Malik, Irfan
Mancuso, James R
Mandryck, James R
Mapar, Jalal
Marcott, Stacy
Martin, Joseph F
Martinez, Ronnie
Mayoral Del Valle, Ricardo G
McCane, Bobby J
McCleary Stephen
McComb, Richard
McCullar, Shannon
McDermott, Thomas
McDonald, Christina E
McDonough, Bryn
McElwain, Patrick J
McEntee, Jonathan
McGough, Daniel
McGovern, Mary Helen
McLane, JoAnn
Meckley, Tammy M
Medina, Yvonne R
Meyer, Joel T
Meyer, Jonathan
Miles, John D
Miller, Alice
Miller, Gail
Miller, Jonathan P
Mina, Peter E
Miranda, Luis
Moman, C. Christopher
Morant, Cardell T
Morgan, Karlos
Moughon, Timothy N
Munshi, Kaizad J
Murphy, Mark
Murray, Royce
Myers, Heidi Y
Nally, Kevin J
Navarro, Donna M
Nelson, Jason L
Newman, Robert B
Nolan, Connie L
Nunez-Neto, Blas
Nunn, Willie
Ocker, Ronald J
O'Connor, Kimberly
Olsen, Kathleen
Olson, David
Owens, Jason D
Padilla, Kenneth
Pakulniewicz, Tracy
Palmer, David J
Paschall, Robert D
Patel, Kalpesh A
Pavlik-Keenan, Catrina
Perez, Nelson
Perriott, Harvey
Peters, Jenna R
Picarelli, John
Piccone, Colleen C
Pineiro, Marlen
Plantz, Chad
Plati, Michael
Podonsky, Glenn S
Pohlman, Teresa R
Porto, Victoria
Price, Corey A
Prosnitz, Susan M
Quinn, Timothy J
Rabin, John L
Raines, Ariana M
Rapp, Marc A
Rasmussen, Nicholas
Razsi, Dustin R
Rezmovic, Jeffrey M
Ritter, David
Roncone, Stephen A
Rosenblum, Marc R
Rowe Jr., Ronald L
Rubino, Jaclyn
Russell, Anthony
Russell, Gabriel
Rynes, Joel C
Sabatino, Diane J
Sahakian, Diane V
Salazar, Rebecca A
Salazar, Ronald M
Salisbury, Anthony
Saltalamachea, Michael
Salvano-Dunn, Dana
Scanlon, Julie A
Scardaville, Michael
Scott, Kika M
Scudder, Ryan J
Seidman, Ricki
Sequin, Debbie W
Sevier, Adrian
Shearer, Ruth C
Short, Victoria D
Sikorskyj, Lucian
Silas, Z. Traci
Siler, Tracy
Silvers, Robert
Singh, Neil S
Sjoberg-Radway, Cynthia
Skelton, Kerry T
Smith, David M
Smith, Frederick B
Smith, Stacy M
Solnet, Jeffrey
Spillars, Andrea K
Spishak, Cynthia
Stainsby, Leiloni
Stanton, Joshua B
Stephens, Celisa M
Sternhell, Rebecca
Stiefel, Nathaniel I
Stough, Michael S
Street, Stacey
Stuntz, Shelby
Sulc, Brian
Swartz, Neal J
Tabaddor, Afsaneh
Talbot, Eric
Tapscott, Wallicia
Tipton, Ann M
Todd, Sarah
Tomney, Christopher J
Toris, Randolph B
Torres, David M
Try, Gregory W
Turi, Keith
Tutoni, Vincent A
Valverde, Michael
Van Houten, Ann
Venture, Veronica
Vespe, Erin E
Vinograd, Samantha
Wadhia, Shoba
Wainstein, Ken
Walker Hall, Delisa D
Walsh, John
Washington, Karinda
Wasowicz, John A
Watkins, Tracey L
Watson, Andre R
Watson, Daniel
Wawro, Joseph D
Wells, James

Whalen, Mary Kate
Wheaton, Kelly D
Williams, Marta
Wilson, Mario N
Wilson, Miltom D
Wolfe, Herbert
Wong, Sharon M
Wright, Christopher J

Dated: October 23, 2023.

Gregory Ruocco,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2023–23684 Filed 10–25–23; 8:45 am]

BILLING CODE 9112–FC–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0101]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Verification Request and Verification Request Supplement

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0101 in the body of the letter, the agency name and Docket ID USCIS–2008–0008. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0008.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0008 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Verification Request and Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–845; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government; State, local or Tribal Government. In the verification process, a participating agency validates an applicant's immigration status by inputting identifying information required into the Verification Information System (VIS), which executes immigration status queries against a range of data sources. If VIS returns an immigration status and the benefit-issuing agency does not find a material discrepancy with the response and the documents provided by the applicant, the verification process is complete. Then, the agency may use that immigration status information in determining whether or not to issue the benefit. In extraordinary situations as determined by the SAVE Program, agencies that do not access the automated verification system may request prior approval from SAVE to query USCIS by filing Form G–845. Although the Form G–845 does not require it, if needed certain agencies may also file the Form G–845 Supplement with the Form G–845, along with copies of immigration documents to receive additional information necessary to make their benefit determinations. While this collection of information is primarily electronic in nature through the VIS query, these forms were originally developed to facilitate communication between all benefit-granting agencies and USCIS to ensure that basic information required to assess status verification requests is provided.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection VIS Query is 21,578,198 and the estimated hour burden per response is 0.085 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,834,147 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

collection: The estimated total annual cost burden associated with this collection of information is $0. The collection of information is primarily electronic in nature and USCIS does not anticipate any mailings of the paper Form G–845 and Supplement and the cost associated with postage.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23613 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: E-Verify NextGen, I–9NG

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 27, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2023–0011. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2023–0011.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 29, 2023, at 88 FR 42093, allowing for a 60-day public comment period. USCIS received six comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2023–0011 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection:

(1) *Type of Information Collection Request:* New Collection.

(2) *Title of the Form/Collection:* E-Verify NextGen.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–9NG; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. E-Verify NextGen, I–9NG, was developed as a demonstration project to further integrate the Form I–9, Employment Eligibility Verification, process with the E-Verify electronic employment eligibility confirmation process to create a more secure and less burdensome employment eligibility verification process overall for employees and employers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9NG Employers, Recruiters and Referrers for a fee, and State Employment Agencies is 189,015 and the estimated hour burden per response is 0.05 hours; the estimated total number of respondents for the information collection I–9NG Employees (New User Account Creation) is 11,668,584 and the estimated burden per response is 0.17 hours; the estimated total number of respondents for the information collection I–9NG Employees (Employment Eligibility Verification, Form I–9NG) is 13,231,050 and the estimated burden per response is 0.08 hours; the estimated total number of respondents for the information collection by Record Keeping and Audits is 13,248,648 and the estimated burden per response is 0.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,955,966 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. This is a voluntary program. Any requirements

to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23617 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0047]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Employment Eligibility Verification

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 27, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0068. All submissions received must include the OMB Control Number 1615–0047 in the body of the letter, the agency name and Docket ID USCIS–2006–0068.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 29, 2023, at 88 FR 42092, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0068 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. The Form I–9 was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, making employment of unauthorized aliens unlawful and diminishing the flow of illegal workers in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9 Employers is 62,063,950 and the estimated hour burden per response is 0.35 hours; the estimated total number of respondents for the information collection I–9 Employees is 62,063,950 and the estimated hour burden per response is 0.15 hours; the estimated total number of respondents for the information collection by Record Keeping is 27,200,000 and the estimated hour burden per response is 0.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 35,655,976 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any requirements to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process. There is no submission to USCIS of materials which eliminates mailing and photocopying costs.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23619 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0075]

Agency Information Collection Activities; Revision of a Currently Approved Collection: I–864, Affidavit of Support Under Section 213A of the INA; I–864A, Contract Between Sponsor and Household Member; I–864EZ, Affidavit of Support Under Section 213A of the INA

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0075 in the body of the letter, the agency name and Docket ID USCIS–2007–0029. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0029.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Background

Since 1997, U.S. immigration law has required certain intending immigrants to submit an Affidavit of Support Under Section 213A of the INA (Form I–864 or Form I–864EZ) executed by a sponsor pledging financial support for the intending immigrant to show that they have adequate means of financial support and are not likely to become a public charge. See INA sections 212(a)(4)(C) and (D). The Affidavit of Support Under Section 213A of the INA is a contract between a sponsor and the U.S. government that imposes a legally enforceable obligation on the sponsor to support the sponsored immigrant until the obligation period ends.

Certain noncitizens are required by regulation to affirmatively request an exemption from filing an Affidavit of Support Under Section 213A of the INA. See 8 CFR 213a.2(a)(1)(i)(B). The Request for Exemption for Intending Immigrant's Affidavit of Support (Form I–864W) is the current mechanism used to affirmatively request the exemption.

However, USCIS is discontinuing the use of the Request for Exemption for Intending Immigrant's Affidavit of Support in its adjudications. Instead, a noncitizen who needs to affirmatively request the exemption from USCIS can request it on the form for their immigration benefit request by checking the appropriate box. For example, an adjustment of status applicant who needs to affirmatively request the exemption will do so on their Application to Register Permanent Residence or Adjust Status (Form I–485) and would not need to complete and submit a Request for Exemption for Intending Immigrant's Affidavit of Support.

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0029 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the INA; Contract Between Sponsor and Household Member; Affidavit of Support under Section 213A of the INA.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–864; I–864A, I–864EZ; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on Form I–864 to determine whether the sponsor has the ability to support the sponsored immigrant under section 213A of the Immigration and Nationality Act. This form standardizes evaluation of a sponsor's ability to support the sponsored immigrant and ensures that basic information required

to assess eligibility is provided by sponsors.

Form I–864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used income of their household members to reach the required 125 percent of the Federal poverty guidelines. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant. The information collection required on Form I–864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of their household members to reach the required income level and the public benefit agencies are requesting reimbursement from the sponsor.

USCIS uses Form I–864EZ in exactly the same way as Form I–864; however, USCIS collects less information from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–864 is 453,345 and the estimated hour burden per response is 5.81 hours; the estimated total number of respondents for the information collection I–864A is 215,800 and the estimated hour burden per response is 1.25 hours; the estimated total number of respondents for the information collection I–864EZ is 100,000 and the estimated hour burden per response is 2.25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,128,684 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $135,569,525.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23614 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0125]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Customer Profile Management System-IDENTity Verification Tool (CPMS–IVT)

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0125 in the body of the letter, the agency name and Docket ID USCIS–2011–0008. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2011–0008.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2011–0008 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Customer Profile Management System-IDENTity Verification Tool (CPMS–IVT).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* M–1061; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Respondents subject to this information collection are individuals appearing at a USCIS District/Field

Office for a required interview in connection with their request for an immigration or naturalization benefit, or in order to receive evidence of an immigration benefit such as a temporary travel document, parole authorization, temporary extension of a I–90, or temporary I–551 stamp in a passport or on a Form I–94 evidencing lawful permanent residence. Respondents are required to have their photograph and fingerprints taken at the USCIS District/Field Office to be inputted into the Customer Profile Management System-IDENTity Verification Tool (CPMS–IVT). The only U.S. citizen respondents subject to enrollment in CPMS–IVT are petitioners filing orphan or adoption petitions (Forms I–600/600A) and U.S. citizen petitioners of family-based petitions required to appear at an ASC for biometric capture for purposes of complying with the Adam Walsh Child Protection and Safety Act of 1996, Public Law 109–248.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection M–1061 is 1,500,000 who respond 2 times annually and the estimated hour burden per response is .083 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 249,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23615 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent To Disclose Information

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0028 in the body of the letter, the agency name and Docket ID USCIS–2008–0020. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0020.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0020 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household;

Supplement 2, Consent to Disclose Information.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–600; I–600A; I–600/I–600A Supplement 1; I–600/I–600A Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will determine the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of their household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I–600A and Form I–600. The U.S. prospective/adoptive parent files Supplement 2 to authorize USCIS to disclose case-related information to adoption service providers that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a. Authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the biometrics submission is 2,520 and the estimated hour burden per response is 1.17 hours; and the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 69,276 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,759,932.

Dated: October 20, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–23651 Filed 10–25–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23RB00UU60900]

Agency Information Collection Activities; Science Communication Strategies Related to Mining Activities

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 27, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192 or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW Mining Communications in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Rudy Schuster by email at *schusterr@usgs.gov,* or by telephone at 970–226–9165. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, 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 June 15, 2023 (88 FR 39271). 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 the agency might 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 personally identifiable

information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS has a history of conducting research on uranium-bearing breccia pipe deposits to address data gaps related to the potential effects of uranium exploration and mining activities in the Grand Canyon watershed, its people, wildlife, and water resources. The USGS also recognizes a need to constantly update methods for communicating science to partners and non-scientists. The project proposed herein seeks to identify a path toward efficiently providing data and results to decision makers, stakeholders, partners, and the public to maximize the utility of science products. This research will advance USGS capability by documenting the efficacy of existing mining-related science communication efforts to partners and will advance USGS knowledge and use of communication methods to deliver actionable science to non-science audiences in the future. Information will be collected via semi-structured interviews conducted in person with members of the general public in the Grand Canyon watershed.

Title of Collection: Science communication strategies related to mining activities.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: NEW.

Respondents/Affected Public: General public (2), State (6), and private businesses (3).

Total Estimated Number of Annual Respondents: 11.

Total Estimated Number of Annual Responses: 11.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 9 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Rudolph Schuster,

Branch Chief, Social & Economic Analysis, USGS.

[FR Doc. 2023–23654 Filed 10–25–23; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_UT_FRN_MO4500170045]

Notice of Realty Action: Modified Competitive Sale of Public Land in Emery County, Utah

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a modified competitive sale of an 80-acre parcel of public land in Emery County, Utah. The parcel would be offered for sale pursuant to the John D. Dingell Jr., Conservation, Management, and Recreation Act. The sale would be subject to the applicable provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and BLM land sale regulations. The surface estate would be sold for no less than the appraised fair market value of $34,000.

DATES: Interested parties must submit written comments, postmarked, or delivered no later than December 11, 2023.

The land would not be offered for sale until after December 26, 2023.

ADDRESSES: Mail written comments or submit sealed bids to the BLM Price Field Office, Field Manager, 125 South 600 West, Price, UT 84501. Comments may also be emailed to *utprmail@blm.gov:* with *Parcel 15 Land Sale* in the subject line or hand delivered to the BLM office during business hours, 8 a.m.- 4:30 p.m. Mountain Time, Monday through Friday, except during Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patrick Ahrnsbrak, Realty Specialist, BLM Price Field Office, phone: 435–781–2753, or email: *pahrnsbrak@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The parcel proposed for sale is isolated from large blocks of Federal land by private land ownership, and is therefore difficult and uneconomic to manage. Enyo Renewable Energy, LLC (Enyo) initially nominated the parcel for the sale. Enyo leased private lands surrounding the parcel to develop the Hornshadow Solar Project, which is a planned 300-megawatt solar photovoltaic (PV) power generation facility that has received a conditional use permit from Emery County. The proposed development is to construct and operate solar PV facilities on lands adjoining the northern and southern boundaries of the BLM sale parcel, also known as Parcel 15. Subsequently, Enyo sold the Hornshadow Solar Project to DESRI Hornshadow Land Holdings, LLC, a wholly owned subsidiary of D.E. Shaw Renewable Investments (DESRI). DESRI has contributed to processing costs associated with the preparation of the modified competitive sale and has therefore been determined to be the designated bidder with the right to meet the highest bid.

The following described public land in Emery County, Utah, located approximately three miles southeast of the town of Castle Dale, has been examined and found suitable for sale in accordance with section 203 of FLPMA, as amended (43 U.S.C. 1713):

Parcel 15, UTU–95714

Salt Lake Meridian, Utah

T. 19 S., R. 8 E.
Sec. 11, SE1/4SE1/4;
Sec. 12, SW1/4SW1/4.

The area described contains 80 acres, according to the official plat of the survey of the said land, on file with the BLM.

The parcel proposed for modified competitive sale would include the conveyance of the surface interest of the United States in accordance with section 203 of FLPMA (43 U.S.C. 1713). All mineral interest will be reserved to the United States in accordance with FLPMA section 209 (43 U.S.C. 1719).

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel would not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The proposed sale conforms with the BLM Price Field Office Resource Management Plan (RMP), approved in October 2008. The lands are identified as available for disposal and listed by the legal description in Appendix R–11 of the RMP. A parcel-specific environmental assessment (EA), document number DOI–BLM–UT–G020–2022–0009–EA, was prepared in connection with this realty action and may be viewed at *https://*

eplanning.blm.gov/eplanning-ui/project/2017592/510.

The parcel proposed for sale has been found appropriate for conveyance under section 203 of FLPMA, and consistent with the following criteria: 43 CFR 2710.0–3(a)(2), ''disposal of such tract shall serve important public objectives . . .''; and 43 CFR 2710.0–3(a)(3), ''such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.'' The parcel has been proposed for potential future renewable energy development, which has been identified as an important public objective. The parcel is isolated from other public lands and has no legal public access making it difficult and uneconomic to manage. Because this parcel is isolated from other public lands, has no legal public access, does not contain suitable or occupied habitat for federally protected species, or contain other protected resources, it is neither needed for any identified Federal purposes, nor suitable for management by another Federal agency.

Proceeds from the sale would be deposited into the Emery County, Utah, Land Acquisition Account, according to Public Law 116–9, Sec. 1253. Funds can be spent from that account to acquire inholdings in an Emery County wilderness area or the San Rafael Swell Recreation Area. If land acquisition opportunities are not available, the funds could be used for the protection of cultural resources on Federal land in Emery County.

Pursuant to the requirements of 43 CFR 2711.1–2(d), publication of this notice in the **Federal Register** will segregate the land from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the public land. The effect of this segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or two years after the date of publication in the **Federal Register**, unless extended by the BLM Utah State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Sale Procedures: In accordance with 43 CFR 2711.3–2, modified competitive bid procedures can be used when the authorized officer determines it is necessary to recognize equitable considerations or public policies and may include, ''offering to designated bidders the right to meet the highest bid'' (2711.3–2(a)(1)(i)), or ''a limitation of persons permitted to bid on a specific tract of land offered for sale'' (2711.3–2(a)(1)(ii)). Due to limited access, the parcel would be offered by modified competitive sale where the bidders are limited to adjacent landowners or entities with current legal access to the parcel. Because of its contribution to processing costs, and existing policy to promote renewable energy development, DESRI would be designated the right to meet the highest bid. The purpose of the sale is to implement land tenure adjustment decisions in the RMP.

Sealed bids for Parcel 15 must be submitted to the BLM Price Field Office at 125 South 600 West, Price, UT 84501, not later than 4 p.m. Mountain Time on December 26, 2023. Bid envelopes must be marked on the lower left front corner as follows: *Parcel 15 Land Sale—Sealed Bid.* Bids must be for not less than the appraised fair market value of $34,000 as stated in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM, for not less than 10 percent of the bid amount. DESRI must also submit a sealed bid according to the provisions above to indicate their continued interest in the parcel and will then be given the opportunity to meet the highest bid. The remainder of the full bid price must be paid by the successful bidder within 180 calendar days of the date of sale. Failure to pay the full price within 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Bid deposits submitted by unsuccessful bidders will be returned.

If the parcel is not sold pursuant to this notice, it may remain available to non-competitive offers for no less than the fair market value. The acceptance or rejection of any offer to purchase the parcel shall be given in writing by the BLM authorized officer no later than 30 days after receipt of such offer unless the offeror waives this right.

The conveyance document, if issued, will include the following terms, covenants, conditions, and reservations:

1. A reservation to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890;

2. A reservation to the United States of all mineral rights;

3. Valid existing rights issued prior to conveyance, including Oil and Gas Lease UTU–91334 and Grazing Permit UT25050 (subject to 2-year cancellation notice); and

4. Additional terms and conditions that the authorized officer deems appropriate.

The EA, maps, and associated documents are available for review at the location listed in the **ADDRESSES** section.

Interested parties and the public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Parcel 15 Land Sale, BLM Price Field Office, at the address listed in the **ADDRESSES** section by the deadline listed in the **DATES** section.

Comments may also be emailed to *utprmail@blm.gov* with Parcel 15 Land Sale in the subject line, or hand delivered to the BLM office during business hours, 8 a.m.–4:30 p.m. Mountain Time, Monday through Friday, except during Federal holidays, at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. The BLM will not consider comments received via telephone calls.

The BLM Utah State Director will review adverse comments regarding the parcel and may sustain, vacate, or modify this realty action, in whole or in part. In the absence of timely adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers or withdraw any land or interest in land from sale.

(Authority: 43 CFR 2710 and Pub. L. 116–9, sec. 1253)

Gregory Sheehan,

State Director.

[FR Doc. 2023–23632 Filed 10–25–23; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–36802; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the

significance of properties nominated before October 14, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by November 13, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 14, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ALABAMA

Etowah County

Gadsden Coca-Cola Bottling Plant, 644 Walnut Street, Gadsden, SG100009569

Houston County

Bank of Columbia, 105 South Main Street, Columbia, SG100009568

COLORADO

Adams County

Deza Estates, (Residential Subdivisions of Metropolitan Denver, 1940–1965 MPS), W 99th Ave, Lunceford Lane, Palmer Lane, Rapp Lane, Northglenn, MP100009565

Denver County

Nurses' Home, 871 N Bellaire St, Denver, SG100009567

Montezuma County

Exon & Rush Meat Market and Mercantile, 315 Central Ave., Dolores, SG100009564

San Miguel County

Ruble-Orendorf Mercantile, 1635 Grand Ave., Norwood, SG100009563

KANSAS

Atchison County

Julius Kuhn Block, 731–733 Commercial Street, 106–110 North 8th Street, Atchison, SG100009552

MONTANA

Richland County

Ruffatto School, 31600 Road 154, Brockton, SG100009561

Silver Bow County

Basin Creek Park Historic District, Approximately 9 miles south of Butte on Basin Creek Rd. (393), Butte vicinity, SG100009566

TENNESSEE

Shelby County

Central Gardens Historic District (Boundary Increase), Roughly bounded by Rembert Street, York, Cleveland, and Eastmoreland Avenues, Memphis, BC100009554

UTAH

Summit County

Little Bell Mine Site, (Historic Mining Resources of Park City, Utah MPS), 1 mi. w of jct. SR–224 and Twisted Branch Rd, Park City, MP100009571

Utah County

Thompson Family Farmstead, 7421 River Bottoms Road, Spanish Fork vicinity, SG100009572

An additional documentation has been received for the following resource(s):

MONTANA

Missoula County

Orange Street Tunnel, (Montana's Steel Stringer and Steel Girder Bridges MPS), Orange St. between N 2nd St. W, & W Alder St., Missoula, AD12000172

TENNESSEE

Shelby County

Central Gardens Historic District (Additional Documentation), Roughly bounded by Rembert St., York, Cleveland and Eastmoreland Aves., Memphis, AD82004040

Nomination(s) submitted by Federal Preservation Officers

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

MARYLAND

Baltimore Independent City

Federal Office Building, 31 Hopkins Plaza, Baltimore, SG100009560

NEW MEXICO

Bernalillo County

Federal Building and U.S. Courthouse, 500 Gold Avenue SW, Albuquerque, SG100009558

Chaves County

Federal Building and U.S. Courthouse, 500 N Richardson Avenue, Roswell, SG100009559

TEXAS

Dallas County

U.S. Courthouse and Federal Office Building, 1100 Commerce Street, Dallas, SG100009557

Authority: Section 60.13 of 36 CFR part 60

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–23661 Filed 10–25–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 2451S180110; S2D2S SS08011000 SX064A000 24XS501520; OMB Control Number 1029–0059]

Agency Information Collection Activities; Grants to States and Tribes

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 27, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy

of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0059 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the 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 October 18, 2022 (87 FR 63088). Comments were received from 14 entities primarily from respondents applying for grants. Among the most common concerns were requiring list of projects to be funded at the time of application and a description of how projects were prioritized and selected. This was deemed unnecessary by commenters since such lists would be tentative at the time and likely to change during subsequent stages of the approval process. Commenters added that changes in the list would require formal amendments, increasing administrative burden unnecessarily. OSMRE revised this requirement requesting lists of eligible problem area descriptions currently inventoried to satisfy the requirement at the initial application stage.

Commenters were opposed to applicants providing detailed information on contractor hirings at the time of application because AML project procurement process occurs much later in the grant's period of performance. In addition, contracting for AML construction services is governed by each state's procurement laws dictating how contractor bids are to be prioritized and documentation requiring worker's background. This was considered excessively burdensome in the application process and was viewed by applicants better suited for post-award project reporting.

Several commenters expressed concern that requiring information for estimated project benefits submitted with the OSM–51 form duplicates and goes above what is already provided from OSMRE's abandoned mine inventory system. In addition, it appeared as duplicative information because some of the same information is detailed in the Environmental Assessment prepared for each reclamation project which is reviewed prior to issuing the authorization to proceed. Commenters stated OSMRE can collect this benefit-type of information from AML programs in other ways that are not part of the grant application process.

In response to comments OSMRE opted for a simplified version of the OSM–51 form to provide flexibility in how information is submitted and to avoid duplication of other grant information received. In addition, OSMRE allowed the OSM–51 form to be optional to provide applicants flexibility in the choice of format for submitting their program narrative and performance reports.

Commenters also stated that the overall burden hours were understated. OSMRE performed additional outreach with respondents resulting in higher estimated burden hours from increases in annual funding for projects requiring greater time for formalizing submissions.

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: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act. The Office of Surface Mining Reclamation and Enforcement (OSMRE) administers three distinct AML programs with varying criteria for projects and eligibility criteria. These are comprised of (1) the Abandoned Mine Land Economic Revitalization (AMLER) Program using appropriated funds from Congress, (2) the traditional fee-based AML grant distributions authorized by SMCRA, and (3) the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58) which appropriated funds for the Abandoned Mine Reclamation Fund administered by OSMRE. One means that States and Tribes satisfy these requirements is submission of the OSM–51 form to report program narrative information as part of their grant applications and to meet their annual post-award reporting requirement. It is necessary that each program is recognized, and unique criteria as specified in program guidance documents is followed when using the OSM–51 form.

Title of Collection: Grants to States and Tribes.

OMB Control Number: 1029–0059.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 26.

Total Estimated Number of Annual Responses: 279.

Estimated Completion Time per Response: Varies from 1 hour to 29 hours.

Total Estimated Number of Annual Burden Hours: 2,423.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2023–23688 Filed 10–25–23; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1374]

Certain Smart Ceiling Fans, Components Thereof, and Associated Systems and Software Thereof; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 20, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Wangs Alliance Corporation d/b/a of WAC Lighting of Port Washington, New York. A supplement to the complaint was filed on September 26, 2023. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart ceiling fans, components thereof, and associated systems and software thereof, by reason of the infringement of certain claims of U.S. Patent No. 11,028,854 (''the '854 patent''); U.S. Patent No. 10,488,897 (''the '897 patent''); and U.S. Patent No. 11,598,345 (''the '345 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 20, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3 and 8–10 of the '854 patent; claims 1–5, 7–9, and 11 of the '897 patent; and claims 1, 3–10, and 12–17 of the '345 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''smart ceiling fans, smart fan devices, and components thereof, specifically electrical boards carrying circuitry that enables smart features thereof, receivers and their circuitry, motors, housings, electrical conversion filters, and controllers, and systems and software associated with any of the foregoing'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Wangs Alliance Corporation d/b/a, WAC Lighting, 44 Harbor Park Drive, Port Washington, NY 11050

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Minka Lighting, LLC, 12500 Jefferson Avenue, Newport News, VA 23602

Tech Lighting LLC, 7400 Linder Avenue, Skokie, IL 60077

VC Brands, LLC, 7400 Linder Avenue, Skokie, IL 60077

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 20, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23625 Filed 10–25–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–051]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 31, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–683 and 731–TA–1594–1596 (Final) (Paper File Folders from China, India, and Vietnam). The Commission currently is scheduled to complete and file its determinations and views of the Commission on November 13, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: October 24, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–23763 Filed 10–24–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0058]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Investigator Quality Survey

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 3, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 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: Lakisha Gregory, either by email at *Lakisha.Gregory@atf.gov,* or by telephone at (202) 648–9260.

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 or the OMB Control Number 1140–0058. 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:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Investigator Quality Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8620.7.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* Individuals or households.

Abstract: Persons interviewed by ATF contract investigators as a part of a federal background investigation are randomly selected to voluntarily complete a survey that measures the effectiveness, efficiency, and professionalism of the investigator. Interviewees who provide email addresses during the interviews may be emailed a survey to complete and return to a specific ATF email address. The Information Collection (IC) OMB 1140–0058 is being revised to correct a typographical error in the Interview Ratings section. A question from the survey was also removed, as it is not included in the investigator's current line of questioning.

5. *Obligation to Respond:* The obligation to respond is voluntary.

6. *Total Estimated Number of Respondents:* 2,500 respondents.

7. *Estimated Time per Respondent:* 5 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 208 hours.

10. *Total Estimated Annual Other Costs Burden:* $0. There is no new cost associated with this information collection since all requests will be electronically submitted.

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: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23640 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Firearms License (FFL) Renewal Application

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 July 25, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 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: Leslie Anderson, by email at *Leslie.anderson@atf.gov,* or by telephone at 304–616–4634.

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 or the OMB Control Number 1140–0019. 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:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Federal Firearms License (FFL) Renewal Application.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8 (5310.11) Part II.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Private Sector-for or not for profit institutions, Individuals or households.

Abstract: The Federal Firearms License Renewal Application—ATF Form 8 (5310.11) Part II is used be members of the public to renew a Federal firearms license (FFL). The collected information is used to identify the FFL business premises and/or collection activity, and also to determine the applicant's eligibility for a FFL renewal.

5. *Obligation to Respond:* The obligation to respond is mandatory. The statutory requirements are implemented in Title 18 U.S.C. Chapter 44.

6. *Total Estimated Number of Respondents:* 33,500 respondents.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 16,750 hours.

10. *Total Estimated Annual Other Costs Burden:* The public cost burden will be reported as $21,105.00, which is equal to $0.63 (mailing cost per respondent) * 33,500 (# of respondents).

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: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23641 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), 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 (PRA). The proposed information collection was previously published in the **Federal Register** on August 9, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 27, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments

especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289 or *lauren.alder.reid@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—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 or the OMB Control Number 1125–0005. 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.

The DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an information collection request (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:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: EOIR–27. The sponsoring business component is the Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households. This information is used to allow practitioners of record to file their entry of appearance for each matter before the Board of Immigration Appeals, and to notify the Department of Homeland Security of their representation of a noncitizen in removal proceedings. EOIR updated the form to utilize the broader term ''practitioner of record,'' as opposed to ''attorney or representative,'' and added information on how the entry of a limited appearance differs from that of a practitioner of record. EOIR made other non-substantive changes for clarity, as well.

5. *Obligation to Respond:* The obligation to respond is mandatory per 8 CFR 1003.38(g) and 8 CFR 1003.2(g)(1).

6. *Total Estimated Number of Respondents:* 42,126 respondents.

7. *Estimate Time per Respondent:* 6 minutes.

8. *Frequency:* Annually.

9. *Total Estimated Annual Time Burden:* 4,213 hours.

10. *Total Estimated Annual Other Costs Burden:* $331,732.

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: October 20, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23644 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0096]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Environmental Information

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Shawn Stevens, ATF–FELC either by mail at 244 Needy Road, Martinsburg, WV 25427, by email at *FELC@atf.gov,* or by telephone at 304–616–4400.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The National Environmental Policy Act, 42 U.S.C. Chapter 55, authorizes the execution of Environmental Information—ATF Form 5000.29, during the application process, in order to ensure compliance with the Act.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Environmental Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 5000.29. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* Private Sector-for or not for profit institutions. The obligation to respond is required to obtain or retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 hours, which is equal to 680 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The estimated annual cost associated with this form is $448.80 (680 respondents × $0.66 postal rate) to mail the form as part of the application.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
Environmental Information	680	1/annually	680	30	340

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23645 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0046]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension of a Previously Approved Collection; Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), 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.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A Brinks, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261, Email: *scott.a.brinks@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177), requires that on and after September 30, 2006, a regulated seller must not sell at retail over the counter (non-prescription) products containing the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, unless it has self-certified to DEA, through DEA's website. The Methamphetamine Production Prevention Act of 2008 (MPPA) (Pub. L. 110–415) was enacted in 2008 to clarify the information entry and signature requirements for electronic logbook systems permitted for the retail sale of scheduled listed chemical products.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

DEA Form 597. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected public (Primary): Private Sector—business or other for-profit. The obligation to respond is mandatory per 21 CFR 1314.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 20,467,641 persons respond as needed to this collection. Responses take 3 minutes for Training record, 15 minutes for Self-Certification, and 1 minute for Transaction Record (regulated seller) and Transaction record (customer).

6. *An estimate of the total annual burden (in hours) associated with the collection:* DEA estimates that this collection takes 727,455 annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $157,279.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (mins.)	Total annual burden (hours)
Training record	51,559	13.200	680,579	3	34,029
Self-Certification	.....	1.000	51,559	15	12,890
Transaction record (regulated seller)	.....	395.975	20,416,082	1	340,268
Transaction record (customer)	20,416,082	1.000	20,416,082	1	340,268
Unduplicated Totals	20,467,641	N/A	41,564,302	.....	727,455

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23643 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0007]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension of a Previously Approved Collection; Registrant Record of Controlled Substances Destroyed

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), 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.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A Brinks, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261, Email: *scott.a.brinks@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: In accordance with the Controlled Substance Act (CSA), every DEA registrant must make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827 and 958. These records must be maintained separately from all other records of the registrant or, alternatively, in the case of non-narcotic controlled substances, be in such form that required information is readily retrievable from the ordinary business records of the registrant. 21 U.S.C 827(b)(2). The records must be kept and be available for at least two years for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827(b)(3). The records must be in accordance with and contain such relevant information as may be required by regulations promulgated by DEA. 21 U.S.C. 827(b)(1). These record requirements help to deter and detect diversion of controlled substances and ensure that registrants remain accountable for all controlled substances within their possession and/or control.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Registrant Record of Controlled Substances Destroyed.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 41. The applicable

component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected public (Primary): Private Sector—business or other for-profit. Other: Private Sector—businesses not-for-profit institutions; Federal, State, local, and tribal governments. The obligation to mandatory per 21 U.S.C. 827.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 92,832 persons respond as needed to this collection. Responses take 30 minutes for DEA Form 41.

6. *An estimate of the total annual burden (in hours) associated with the collection:* DEA estimates that this collection takes 46,416 annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (mins)	Total annual burden (hours)
DEA Form 41	92,832	1	92,832	30	46,416
Unduplicated Totals	92,832	N/A	92,832	30	46,416

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23642 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0109]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Informant Agreement—ATF Form 3252.2

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Renee Reid, Office of Field Operations, Special Operations Division—Mailstop (7.E—301) either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov* or telephone at 202–280–9334.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Any individual registering as a confidential informant (CI) or currently a CI for ATF must provide their personally identifiable information. ATF will utilize the information to verify the identity of the individual. Respondents include members of the public who can provide useful and credible information to ATF regarding felonious criminal activities, and from whom ATF expects or intends to obtain additional useful and credible information regarding such activities in the future.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Information Agreement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 3252.2.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize the form annually, and it will take each respondent approximately 6 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .10 (6 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (mins.)	Total annual burden (hours)
ATF F 3252.2	2,000	1/annually	2,000	6	200

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23647 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0112]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Reciprocity Questionnaire

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Gwen Cates, PSD, either by mail at Personnel Security Division, Bureau of ATF, Washington, DC 20226, by email at *Gwen.Cates@atf.gov,* or telephone at 202–648–9434.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Reciprocity Questionnaire (ATF F 8620.59) is used to determine if a candidate for federal or contractor employment at ATF has a previously completed background investigation and/or a polygraph examination from another federal agency, and whether the candidate is currently the subject of any investigation being conducted by the candidate's current employer. Information Collection (IC) OMB 1140–0112 is being revised due to material changes to the form, such as chart consolidation, new questions added, question removal and renumbering, updated instructions to include information relating to current investigations being conducted on the applicant/candidate by their current employer, and amendment of the Paper Reduction Act to correspond with updated instructions.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Reciprocity Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 8620.59.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize the form once annually, and it will take each respondent approximately 10 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 333 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * .16667 (10 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (mins.)	Total annual burden (hours)
ATF F 8620.59	2000	1/annually	2000	10	333

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–23646 Filed 10–25–23; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Announcement of Award of a Non-Competitive Cooperative Agreement

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of intention to award non-competitive cooperative agreement.

SUMMARY: NEH intends to award $491,049 to the National Native American Boarding School Healing Coalition (NABS) for continued survey work and prioritization of primary sources documenting the history of Indian boarding schools in the U.S.; digitization and description of 120,000 pages of federal boarding school records held by the National Archives and Records Administration (NARA); and collaboration among source communities, the National Indian Boarding School Digital Archive Data Aggregation Working Group, the Social Networks and Archival Context cooperative, and federal partners. This action is necessary to further the development of digital access to records significant to public understanding of the history and impacts of Indian boarding schools in the U.S. Because NABS has invested four years into developing a unique platform with the technical considerations to aggregate boarding school records of various sizes and formats and leads an established community of practice creating standards and best practices in boarding school record curation, NEH determined that a competition to fund the construction of a similar platform and capacities would be uneconomical and impractical.

DATES: The anticipated period of performance is January 1, 2024 to December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Briann Greenfield, Director, Division Preservation & Access, 400 Seventh Street SW, Washington, DC 20024. Phone: 202.606.8422. Email: *bgreenfield@neh.gov.*

SUPPLEMENTARY INFORMATION: NEH is an independent federal agency created in 1965. It is one of the largest funders of humanities programs in the United States. Because democracy demands wisdom, NEH serves and strengthens our republic by promoting excellence in the humanities and conveying the lessons of history to all Americans. NEH accomplishes this mission by awarding grants for top-rated proposals examined by panels of independent, external reviewers.

NEH offers funding under the authority of *2*0 U.S.C. 956. Awards are subject to 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the General Terms and Conditions for Awards to Organizations (for grants and cooperative agreements issued January 1, 2022 or later).

Dated: October 23, 2023.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2023–23658 Filed 10–25–23; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482; NRC–2023–0185]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation, for operation of the Wolf Creek Generating Station, Unit 1. The proposed amendment would modify the implementation date of License Amendment No. 237 for Wolf Creek Generating Station, Unit 1.

DATES: Submit comments by November 27, 2023. Request for a hearing or petitions for leave to intervene must be filed by December 26, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- Federal rulemaking website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0185. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Samson Lee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3168; email: *Samson.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0185 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0185.
- *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 License Amendment Request to Modify the 90-Day Implementation of License Amendment No. 237 is available in ADAMS under Accession No. ML23292A359.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0185 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation, for operation of the Wolf Creek Generating Station, Unit 1, located in Coffey County, Kansas.

By letter dated August 31, 2023 (ADAMS Accession No. ML23165A250), the NRC issued Amendment No. 237 to Renewed Facility Operating License No. NPF–42 for the Wolf Creek Generating Station, Unit 1. The amendment revised License Condition 2.C.(5), ''Fire Protection (Section 9.5.1, SER [Safety Evaluation Report], Section 9.5.1.8, SSER [Supplement to SER] #5),'' and the Updated Safety Analysis Report to allow the use of hard hat mounted portable lights as the primary emergency lighting means in certain fire areas for illuminating safe shutdown equipment, and access and egress routes to the equipment. By letter dated October 19, 2023 (ADAMS Accession No. ML23292A357), Wolf Creek Nuclear Operating Corporation requested correction of the NRC staff safety evaluation for Amendment No. 237. Wolf Creek Nuclear Operating Corporation stated that it cannot implement the amendment as approved and is requesting modification of the implementation date for Amendment No. 237 from 90 days after approval of Amendment No. 237 to 90 days after the NRC corrects the associated safety evaluation.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration (NSHC). Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed modification to the 90-day implementation date for License Amendment Number 237 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing Fire Protection Program will remain in effect during the modified implementation period.

The current Fire Protection Program and associated post-fire operator manual actions for a fire outside the control room will continue to remain feasible and reliable, demonstrating that the plant can be safely shutdown in the event of a fire. The use of the existing Fire Protection Program will not adversely affect the performance of operator manual actions in support of applicable procedures.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed modification to the 90-day implementation date for License Amendment Number 237 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The existing Fire Protection Program will remain in effect during the modified implementation period. Considering the current Fire Protection Program remains in place, no physical alteration of the plant will occur and does not result in the installation of any new or different kind of equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed modification to the 90-day implementation date for License Amendment Number 237 is not a reduction in margin of safety. The existing Fire Protection Program will remain in effect during the modified implementation period and has an acceptable margin of safety and has been approved by the NRC.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves NSHC.

The NRC is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 60 day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in

accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such

information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated October 19, 2023 (ADAMS Accession No. ML23292A359).

Attorney for licensee: Thomas C. Poindexter, Nukelaw LLC, 66 Franklin Street, Unit 502, Annapolis, MD 21401.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Dated: October 23, 2023.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Project Manager,Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–23676 Filed 10–25–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0207]

Information Collection: NRC Form 241, Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters.''

DATES: Submit comments by November 27, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0207 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0207.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23117A086. The supporting statement is available in ADAMS under Accession No. ML23276B432.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 21, 2023, 88 FR 47194.

1. *The title of the information collection:* NRC Form 241, Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters.
2. *OMB approval number:* 3150–0013.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 241.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* Non-Agreement States.
7. *The estimated number of annual responses:* 1,689.
8. *The estimated number of annual respondents:* 179.
9. *The estimated number of hours needed annually to comply with the*

information collection requirement or request: 467 hours (89.5 hours for initial submissions + 377.5 for changes + 0 hours for clarifications).

10. *Abstract:* Any Agreement State licensee who engages in the use of radioactive material in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in section 150.20 of title 10 of the *Code of Federal Regulations* (10 CFR), is required to file, with the NRC Regional Administrator for the Region in which the Agreement State that issues the license is located, a copy of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31, at least three days before engaging in such activity. This mandatory notification permits the NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Dated: October 23, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–23666 Filed 10–25–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice: 12245]

30-Day Notice of Proposed Information Collection: Three (3) Passport Services Information Collections: Birth Affidavit, Affidavit Regarding a Change of Name, and Statement of Non-Receipt of a U.S. Passport

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collections described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on these collections from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to November 27, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Birth Affidavit.
- *OMB Control Number:* 1405–0132.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–10.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 6,028.
- *Estimated Number of Responses:* 6,028.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 4,018 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

- *Title of Information Collection:* Affidavit Regarding a Change of Name.
- *OMB Control Number:* 1405–0133.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–60.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 3,617.
- *Estimated Number of Responses:* 3,617.
- *Average Time Per Response:* 40 minutes.
- *Total Estimated Time Burden:* 2,411 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

- *Title of Information Collection:* Statement of Non-Receipt of a U.S. Passport.
- *OMB Control Number:* 1405–0146.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–86.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 18,260.
- *Estimated Number of Responses:* 18,260.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Time Burden:* 4,565 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collections

- *1405–0132, DS–10, Birth Affidavit:* The form is submitted in conjunction with an application for a U.S. passport and is used by Passport Services to collect information for the purpose of establishing the U.S. nationality of a passport applicant who has not submitted an acceptable United States birth certificate with their passport application. The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq*, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Pursuant to 22 U.S.C. 212 and 22 CFR 51.2, only U.S. nationals may be issued a U.S. passport. Most passport applicants establish U.S. nationality by providing a birth certificate that lists a place of birth within the United States or its outlying possessions (currently American Samoa and Swains Island). Some applicants, however, may have been born in the United States (and subject to its jurisdiction), but were never issued a birth certificate. Form DS–10 is a form affidavit for completion by a witness to the birth of such an applicant; it collects information relevant to establishing the identity of the affiant, and the birth circumstances of the passport applicant. If credible, the affidavit may permit the applicant to show U.S. nationality based on the applicant's birth in the United States, despite never having been issued a U.S. birth certificate. We use the information collected on the person completing the

affidavit to confirm that individual's identity, which is relevant to confirming his or her relationship to the applicant and in assessing the likelihood that the affiant has personal knowledge of the facts of the applicant's birth.

In an ongoing effort to reduce public burden times, the ''Sex'' field (previously Item 2) has been removed from the DS–10, Birth Affidavit. Passport Services determined that this decision will not affect the procedural or policy aspects of DS–10 form adjudication or impact the determination of U.S. citizenship findings by passport adjudicators.

- *1405–0133, DS–60, Affidavit Regarding a Change of Name:* The form is submitted in conjunction with an application for a U.S. passport. It is used by Passport Services to collect information for the purpose of establishing that a passport applicant has adopted a new name without formal court proceedings or by marriage and has publicly and exclusively used the adopted name over a period of time (at least five years).
- *1405–0146, DS–86, Statement of Non-Receipt of a U.S. Passport:* The form is used by the U.S. Department of State to collect information for the purpose of issuing a replacement passport to customers whose passports have been issued but who have not received their passport documents in the mail. The information collected on the Statement of Non-Receipt of a U.S. Passport is used by the Department of State to help ensure that no person bears more than one valid or potentially valid U.S. passport book of the same type and/or passport card at any one time, except as authorized by the Department. The information on the form is also used to address passport fraud and misuse.

All three forms have been amended to replace the term ''sex'' with ''gender'' and to be pronoun-inclusive of all genders.

Methodology

When needed, the Birth Affidavit is either provided by the Department or downloaded from the Department's website and completed by the affiant. It must be signed in the presence of a passport agent, acceptance agent, or notary.

When needed, the Affidavit Regarding a Change of Name is either provided by the Department or downloaded from the Department's website and completed by the affiant. It must be signed in the presence of a passport agent, passport acceptance agent, or notary.

When needed, the Statement of Non-Receipt of a U.S. Passport is either provided by the Department or downloaded from the Department's website and completed by the passport applicant.

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2023–23657 Filed 10–25–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Finding of No Significant Impact for the I–15 St. George Improved Project in Utah and Final Federal Agency Actions

AGENCY: Federal Highway Administration (FHWA), Department of Transportation, Utah Department of Transportation (UDOT).

ACTION: Notice of availability and notice of limitations on claims for judicial review of actions by UDOT and other Federal agencies.

SUMMARY: The FHWA, on behalf of UDOT, is issuing this notice to announce the availability of the Finding of No Significant Impact (FONSI) for the Interstate 15 (I–15) St. George Improved Project, Bluff Street to St. George Boulevard, in St. George City, Washington County, Utah. In addition, this notice is being issued to announce actions taken by UDOT that are final Federal agency actions related to the project referenced above. Those actions grant licenses, permits, and/or approvals for the project. The FONSI provides details on the Selected Alternative for the proposed improvements.

DATES: This decision became operative on October 12, 2023. By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 25, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carissa Watanabe, Environmental Program Manager, UDOT Environmental Services, P.O. Box 143600, Salt Lake City, UT 84114; (503) 939–3798; email: *cwatanabe@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this action are being, or have been, carried out by UDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding (MOU) dated May 26, 2022, and executed by FHWA and UDOT. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and/or approvals for the I–15 St. George Improved project in the State of Utah.

UDOT's purpose for this project is to improve operations of the I–15 Bluff Street (Milepost 6) and St. George Boulevard (Milepost 8) interchanges; improve access from I–15 to regional destinations in St. George City; and improve mobility options for a broad range of users, including pedestrians and cyclists. UDOT has selected the Single Point Urban Interchange (SPUI) alternative. The selected alternative would construct: a new SPUI interchange on I–15 at 700 South; roadway improvements along 700 South and the adjacent intersections; and a new 12-foot-wide shared-use trail.

The project is identified in UDOT's adopted 2023–2028 State Transportation Improvement Program as project number 18218 with funding identified for final design and construction. The project is also included in the Dixie Metropolitan Planning Organization (MPO) 2023–2050 Regional Transportation Plan approved in May 2023 and the Dixie MPO 2023–2027 Transportation Improvement Plan.

The actions by UDOT, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) approved on April 25, 2023, and the FONSI (Finding of No Significant Impact for I–15 St. George Improved; Bluff Street to St. George Boulevard; St. George City, Washington County, Utah, Project No. S–I15–1(136)6) approved on October 12, 2023, and other documents in the project record. The EA and FONSI are available for review at the UDOT Central Complex, 4501 South 2700 West, Salt Lake City, Utah. In addition, the EA and FONSI documents can be viewed and downloaded from the project website at *https://udotinput.utah.gov/i15stgeorge.* This notice applies to the EA, the FONSI, and all other UDOT and Federal

agency decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4370m–12]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; 23 U.S.C. 139.

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544], Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668d].

5. *Historic and Cultural Resources:* National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101–307108]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Title VI of Civil Rights Act of 1964 [42 U.S.C. 2000d–2000d–7]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1389]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund Act [54 U.S.C. 200301–200310]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Appropriation Act of 1899, as amended [33 U.S.C. 401–418]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 9671–9675]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992k].

9. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; E.O. 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; E.O. 14008 Tackling the Climate Crisis at Home and Abroad.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (*l*)(1).

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2023–23687 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0033]

New Jersey Transit's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on October 16, 2023, New Jersey Transit (NJT) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. The RFA notifies FRA of a planned PTC outage to its I–ETMS PTC System for maintenance purposes. FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by November 13, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0033. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on October 16, 2023, NJT submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), which seeks FRA's approval for an approximately two-hour but no greater that three-hour outage of its PTC system to support NJT's PTC Back Office Subsystem upgrade to improve the reliability and stability of NJT's I–ETMS PTC system. NJT'S RFA states that the PTC system outage is necessary to perform the upgrade to NJT's PTC Back Office System. The RFA is available in Docket No. FRA–2010–0033. Interested parties are invited to comment on NJT's RFA by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49

CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–23635 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0029]

Amtrak's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on October 17, 2023, the National Railroad Passenger Corporation (Amtrak) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by November 15, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0029. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on October 17, 2023, Amtrak submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), which seeks FRA's approval for an approximately two- hour but no greater that three-hour PTC outage that is necessary to enable an upgrade to Amtrak's PTC Back Office Subsystem. Amtrak's RFA states that to perform a necessary PTC Back Office Subsystem upgrade to improve the reliability and stability of the Amtrak's I–ETMS PTC system, Amtrak plans to temporarily disable its Mixed System PTC Back Office Subsystem. The RFA is available in Docket No. FRA–2010–0029. Interested parties are invited to comment on Amtrak's RFA by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–23638 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0064]

Consolidated Rail Corporation's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on October 16, 2023, the Consolidated Rail Corporation (Conrail) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system to notify FRA of a planned PTC outage to perform a necessary PTC Back Office Subsystem upgrade during December 2023. FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by November 15, 2023. FRA

may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0064. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on October 16, 2023, Conrail submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS) which seeks FRA's approval for a three-hour outage in December 2023 to perform an upgrade to Conrail's PTC Back Office Subsystem to improve the reliability and stability of Conrail's I–ETMS system. Conrail's RFA states that their I–ETMS system must be disabled in order to perform the PTC Back Office System upgrade. The RFA is available in Docket No. FRA–2010–0064.

Interested parties are invited to comment on Conrail's RFA to its PTC system by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTC system at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–23637 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2016–0065]

Defect and Noncompliance Notification and Reporting

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

ACTION: Notice and request for comment on the reinstatement of a previously approved collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for the reinstatement of a previously approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. *This document describes a collection of information for which NHTSA intends to seek OMB approval.*

DATES: Comments must be submitted on or before December 26, 2023.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2016–0065 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jeremy Gunderson, Recall Management Division (NEF–107), *Jeremy.Gunderson@dot.gov,* National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200

New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Defect and Noncompliance Notification and Reporting.

OMB Control Number: 2127–0004.

Form Number(s): N/A.

Type of Request: Reinstatement of a previously approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: This notice requests comment on NHTSA's proposed reinstatement of a previously approved collection of information, designated as OMB No. 2127–0004. This collection covers the information collection requirements found within various statutory provisions of the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.,* that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealer notifications and free remedy campaigns that follow those notifications. The sections of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166. Many of these requirements are implemented through, and addressed with more specificity in, 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR 577, *Defect and Noncompliance Notification* (Part 577).

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to notify, and then provide various information and documents to, NHTSA when a safety defect or noncompliance with FMVSS is identified in products they manufactured. *See* 49 U.S.C. 30118(b) and 49 CFR 573.6. Manufacturers are further required to notify owners, purchasers, dealers, and distributors about the safety defect or noncompliance. *See* 49 U.S.C. 30118(b), 30120(a); 49 CFR 577.7, 577.13. Manufacturers are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. *See* 49 U.S.C. 30166(f); 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. *See* 49 U.S.C. 30120(d) and 49 CFR 573.13. Manufacturers are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of eight quarterly reports and three annual reports reporting on the progress of their recall campaigns. See 49 U.S.C. 30118and 49 CFR 573.7.

The Act and part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. *See* 49 U.S.C. 30120(d) and 49 CFR 573.6(c)(9). The regulations also require that manufacturers report to NHTSA intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n) and its implementing regulation found at 49 CFR 573.10 mandate that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is required to report that sale or lease to NHTSA no more than five working days after the person to whom the tire was sold or leased takes possession of it.

Description of the Need for the Information and Proposed Use of the Information: This information is necessary to enable NHTSA to administer, monitor, and enforce the legal, statutory, and regulatory requirements identified above. These requirements are intended to ensure the safety of the motoring public through the proper and timely notification and remedy of defective or noncompliant motor vehicles and motor vehicle equipment.

Affected Public: Businesses or individuals.

Estimated Number of Respondents: NHTSA receives reports of defect or noncompliance from roughly 240 manufacturers per year. Accordingly, we estimate that there will be approximately 240 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings.

In summary, we estimate that there will be a total of 240 respondents per year associated with OMB No. 2127–0004.

Frequency: As circumstances necessitate.

Estimated Burden: NHTSA previously estimated an annual burden of 64,966 hours associated with this collection (of which 456 hours was contemplated for conducting supplemental recall communications under administrative activities. We continue to estimate a small burden of 2 hours annually in order to set up a manufacturer's online recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 480 hours annually (2 hours × 240 MFRs).

Our prior estimates of the burden hours and cost associated with the requirements currently covered by this

information collection require adjustment as follows.

Based on current information, we estimate 240 distinct manufacturers filing an average of 976 part 573 Safety Recall Reports each year. This is a change from our previous estimate of 988 part 573 Safety Recall Reports filed by 249 manufacturers each year. In addition, with reference to the metric associated with NHTSA's Vehicle Identification Number (VIN) Look-up Tool regulation, *see* 49 CFR 573.15, we continue to estimate it takes the 17 major passenger vehicle manufacturers (those that produce more than 25,000 vehicles annually) additional burden hours to complete these Reports to NHTSA, as explored in more detail below. *See* 82 FR 60789 (December 22, 2017). Between 2017 and 2021, the major passenger vehicle manufacturers conducted an average of 355 recalls annually.

We continue to estimate that maintenance of the required owner, purchaser, dealer, and distributors lists requires 8 hours a year per manufacturer. We also continue to estimate it takes a major passenger vehicle manufacturer 40 hours to complete each part 573 Safety Recall notification report to NHTSA, and it takes all other manufacturers 4 hours. Accordingly, we estimate the annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance for the 17 major passenger vehicle-manufacturers to be 14,200 hours annually (355 notices × 40 hours/report), and that all other manufacturers require a total of 2,484 hours annually (621 notices × 4 hours/report) to file their notices. Thus, the estimated annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance is 17,164 hours (14,200 hours + 2,484 hours) + (240 MFRs × 8 hours to maintain purchaser lists).[1]

We continue to estimate that an additional 40 hours will be needed to account for major passenger vehicle manufacturers adding details to Part 573 Safety Recall Reports relating to the intended schedule for notifying its dealers and distributors and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. An additional 2 hours will be needed to account for this obligation in other manufacturers' Safety Recall Reports. This burden is estimated at 15,442 hours annually (621 notices × 2 hours/notification) + (355 notices × 40 hours/notification).

49 U.S.C. 30166(f) requires manufacturers to provide to the Agency copies of all communications regarding defects and noncompliances sent to owners, purchasers, and dealerships. Manufacturers must index these communications by the year, make, and model of the vehicle as well as provide a concise summary of the subject of the communication. We continue to estimate this burden requires 3 hours for each vehicle recall for the 17 major passenger vehicle manufacturers, and 30 minutes for all other manufacturers for each vehicle recall. This totals an estimated 1,375.5 hours annually (355 recalls × 3 hours for the 17 major passenger vehicle manufacturers) + (621 recalls × .5 for all other manufacturers).

In the event a manufacturer supplied the defective or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are then to provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.7(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers, since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, which is a liberal estimate given that many equipment manufacturers do not use independent distributors, the total number of burden hours associated with this third-party notification requirement is approximately 1,290 hours per year (86 recalls × 3 distributors × 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, we continue to estimate that the preparation of a reimbursement plan takes approximately 4 hours annually. We also continue to estimate that an additional 1.5 hours per year is spent by the 17 major passenger vehicle manufacturers adapting the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters, whereas an additional .5 hours per year is spent on this task by all other manufacturers. And we continue to estimate that an additional 12 hours annually is spent disseminating plan information, for a total of 4,827 annual burden hours ((249 MFRs × 4 hours to prepare plan) + (355 recalls × 1.5 hours tailoring plan for each recall) + (621 recalls × .5 hours) + (249 MFRs × 12 hours to disseminate plan information)).

The Safety Act and 49 CFR part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone who knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information related to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We believe our previous estimate of 12 tire recalls per year needs to be adjusted to 11 tire recalls per year to better reflect recent data. We continue to estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 22 burden hours (11 tire recalls a year × 2 hours per recall).

Manufacturer-owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided, and our original expectation that dealers would comply with manufacturers' plans has proven accurate.

Accordingly, we estimate 22 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

The agency continues to estimate 1 burden hour annually will be spent preparing and submitting reports of a defective or noncompliant tire being intentionally sold or leased under 49 U.S.C. 30166(n) and its implementing regulation at 49 CFR 573.10.

[1] For more information about how we derived these and certain other estimates, please see 81 FR 70269 (October 11, 2016).

We continue to expect that nine vehicle manufacturers, who did not operate VIN-based recalls lookup systems prior to August 2013, incur certain recurring burdens on an annual basis. We continue to estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours include: Backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We continue to estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: Operating system and security patch management; application/web server management; and application server system and log files management. We continue to estimate these burdens will total 1,800 hours each year (9 MFRs × 200 hours). We also continue to estimate the recurring costs of these burden hours will be $30,000 per manufacturer.[2] Furthermore, we continue to estimate that the total cost to the industry from these recurring expenses will total $270,000, on an annual basis (9 MFRs × $30,000).

Changes to 49 CFR part 573 in 2013 required 27 manufacturers to update each recalled vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years continues to add a recurring burden on top of the one-time burden to implement and operate these online search tools. We continue to estimate that 8 affected motorcycle manufacturers will make recalled VINs available for an average of 2 recalls each year and 19 affected passenger vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We continue to estimate this will require 8,736 burden hours per year (1 hour × 2 recalls × 52 weeks × 8 MFRs + 1 hour × 8 recalls × 52 weeks × 19 MFRs) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

Due to a congressionally-mandated increase in the required number of quarterly reports for each recall, the number of quarterly reports that track the completion of safety recalls has also increased. Our previous estimate of 4,498 quarterly reports received annually is now revised upwards to 5,875 quarter reports received annually. We continue to estimate it takes manufacturers 1 hour to gather the pertinent information for each quarterly report, and 10 additional hours for the 17 major passenger vehicle manufacturers to submit electronic reports. We therefore now estimate that the quarterly reporting burden pursuant to 49 U.S.C.A. 30118 totals 6,045 hours ((5,875 quarterly reports × 1 hour/report) + (17 MFRs × 10 hours for electronic submission)).

We continue to estimate that 20 percent of part 573 reports will involve a change or addition regarding recall components, and that at two hours per amended report, this totals 390 burden hours per year (976 recalls × .20 = 195 recalls; 195 × 2 = 390 hours).

Additionally, per the Bipartisan Infrastructure Law (Pub. L. 117–58, title IV, subtitle B, section 24202), manufacturers are now required to submit three (3) annual recall completion rate reports. NHTSA estimates that it will receive and average of 316 reports yearly from manufacturers. We estimate it takes manufacturers 2 hours to complete annual reports, including 1.5 hours to gather pertinent information for each report, and .5 hours for the 17 major passenger vehicle manufacturers to submit the electronic reports. We therefore estimate that the annual reporting burden pursuant to 49 U.S.C. 30118 totals 632 hours ((316 annual reports × 1.5 hours) + (17 MFRs × .5 hours for electronic submission)). We continue to estimate that 20 percent of Part 573 reports will involve a change or addition regarding recall components, and that at two hours per amended report, this totals 390 burden hours per year (976 recalls × .20 = 195 recalls; 195 × 2 = 390 hours).

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We continue to estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs × 2 hours).

We continue to estimate that it takes the 17 major passenger vehicle manufacturers an average of 11 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We also continue to estimate it takes 8 hours for all other manufacturers to perform this task. Accordingly, we estimate that the 49 CFR part 577 requirements result in 8,873 burden hours annually (11 hours per recall × 355 recalls per year) + (8 hours per recall × 621 recalls per year).

We previously calculated that about 12 percent of past recalls require an interim notification mailing, but recent trends show that 3 percent of recalls require an interim owner notification mailing. We continue to estimate the preparation of an interim notification can take up to 10 hours. We therefore estimate that 1,250 burden hours are associated with the 60-day interim notification requirement (976 recalls × .03 = 34 recalls; 34 recalls times 10 hours per recall = 340 hours).

As for costs associated with notifying owners and purchasers of recalls, to reflect an increase in postage rates, we are revising our estimate of the cost of first-class mail notification to $1.53 per notification, on average. This cost estimate includes the costs of printing and mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 51.4 million letters are mailed yearly totaling $78,642,000 ($1.53 per letter × 51,400,000 letters). The requirement in 49 CFR part 577 for a manufacturer to notify their affected customers within 60 days would add an additional $10,223,460 (51,400,000 letters × .03 requiring interim owner notifications = 1,542,000 letters; 1,542,000 × $1.53 = $2,359,260). In total, we estimate that the current 49 CFR part 577 requirements cost manufacturers a total of $81,001,260 annually ($78,642,000 for owner notification letters + $2,359,260 for interim notification letters = $81,001,260).

Utilizing these variables, we now estimate an initial annualized cost over the next three years of $81,271,260 per year.

Because of the forgoing burden estimates, we are revising the burden estimate associated with this collection. The 49 CFR part 573 and 49 CFR part 577 requirements found in today's notice will require 68,837.5 hours each year. Additionally, manufacturers impacted by 49 CFR part 573 and 49 CFR part 577 requirements will incur a recurring annual cost estimated at $81,271,260 total. NHTSA welcomes further comment and data on these estimates.

Public Comments Invited: You are asked to comment on any aspects of this

[2] $8,000 (for data center hosting for the physical server) + $12,000 (for web/application developer support) = $30,000.

information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Cem Hatipoglu,

Acting Associate Administrator for Enforcement.

[FR Doc. 2023–23639 Filed 10–25–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Late Filing of Certification or Notices

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning late filing of certification or notices.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–2098 or Late Filing of Certification or Notices.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Late Filing of Certification or Notices.

OMB Number: 1545–2098.

Regulation Project Number: Rev. Proc. 2008–27.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings under sections 897 and 1445. This revenue procedure provides a simplified method for taxpayers to request relief for late filings under sections 1.897–2(g)(1)(ii)(A), 1.897–2(h)(2), 1.1445–2(d)(2), 1.1445–5(b)(2), and 1.1445–5(b)(4) of the Income Tax Regulations.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 250.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–23674 Filed 10–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Production Tax Credit for Refined Coal

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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning production tax credit for refined coal.

DATES: Written comments should be received on or before December 26, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–2158 or Production Tax Credit for Refined Coal.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Production Tax Credit for Refined Coal.

OMB Number: 1545–2158.

Notice Number: Notice 2010–54.

Abstract: This notice sets forth interim guidance pending the issuance of regulations relating to the tax credit under § 45 of the Internal Revenue Code (Code) for refined coal. Taxpayers must

file certification that its refined coal has achieved 'qualified emissions reduction' with its tax return in order to claim the production tax credit for refined coal.

Current Actions: There are no changes to the notice or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 100.

Estimated Time per Response: 15 hours.

Estimated Total Annual Burden Hours: 1,500 hours.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 20, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–23675 Filed 10–25–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Veterans' Advisory Committee on Education (''Committee'') will meet November 13–15, 2023, from 11.00 a.m. to 5:00 p.m. Eastern Standard Time virtually via the Microsoft Teams platform. All sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for Veterans, Service members, Reservists and Dependents of Veterans including programs under Chapters 30, 32, 33, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

The purpose of this meeting is for the Committee to hear reports from three subcommittees (Modernization, Veteran Vocational Education and Training Programs, and Distance Learning), to hear other updates and briefings, and to discuss potential 2023 recommendations.

Interested persons may attend virtually via Microsoft Teams. Please email *EDUSTAENG.VBAVACO@va.gov* prior to November 10, 2023, if you wish to attend or you can dial-in by phone (for audio only) at 1–205–235–3524 (Toll) using the Conference ID: 868 260 319#.

Time will be allotted for receiving oral presentations from the public and individuals wishing to share information with the Committee may submit written statements for the Committee's review to Ms. Kaprice Dyson, Designated Federal Official, Department of Veterans Affairs, by email at *EDUSTAENG.VBAVACO@va.gov*. Advance comments will be accepted until close of business on Friday, November 10, 2023. In the communication, the writers must identify themselves and state the organization or association they represent for inclusion in the official record.

Dated: October 23, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–23648 Filed 10–25–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Thursday,
No. 206 October 26, 2023

Part II

Department of Energy

48 CFR Chapter 9
Department of Energy Acquisition Regulation (DEAR); Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Chapter 9

RIN 1991–AC17

Department of Energy Acquisition Regulation (DEAR)

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and request for comments.

SUMMARY: The Department of Energy (DOE) proposes a comprehensive revision of its Acquisition Regulation in order to update and streamline the policies, procedures, provisions and clauses that are applicable to its contracts. This rulemaking proposes to update or eliminate coverage that is obsolete or that unnecessarily duplicates the Federal Acquisition Regulation (FAR) and retain only that coverage which either implements or supplements the FAR for the award and administration of the DOE's contracts. The rule proposes the addition of several new clauses as well as amendments to several existing clauses, which will promote more uniform application of the DOE's contract award and administration policies.

DATES: DOE will accept written comments regarding this notice of proposed rulemaking no later than December 26, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by ''DEAR Rewrite and RIN 1991–AC17'', by any of the following methods:

- *Email to: DEARrulemaking@hq.doe.gov.* Include DEAR Rewrite and RIN 1991–AC17 in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Acquisition Management, MA–611, 1000 Independence Avenue SW, Washington, DC 20585. However, comments by email are encouraged.

Docket

The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at the *www.regulations.gov* web page associated with RIN 1991–AC17. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III, Public Participation, for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jason Taylor, U.S. Department of Energy, Office of Management, Office of Acquisition Management at (202) 287–1560 or by email at *jason.taylor@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The FAR (48 CFR chapter 1) is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds. The Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. 1702, authorizes the issuance of agency-specific acquisition regulations that implement or supplement the FAR. Pursuant to this authority, DOE and the National Nuclear Security Administration (NNSA) promulgated the Department of Energy Acquisition Regulation (DEAR), set forth at 48 CFR chapter 9, to provide uniform acquisition policies and procedures for DOE and NNSA. This proposed rule to update the DEAR is issued under that same authority.

Over the past decade, DOE has worked to improve the way it conducts business with its contractors by strengthening contract management policies and practices and implementing new processes throughout the Department complex. In the spirit of alleviating unnecessary regulatory burdens while remaining prudent stewards of taxpayer resources, DOE undertook a review of its acquisition framework, including the DEAR.

As a result of that process, DOE has determined that the proposed amendments are necessary to update or remove obsolete provisions, incorporate class deviations, streamline policies and procedures where appropriate, and implement ten new clauses which will standardize clause language and eliminate the need for various local clauses in current use. Through this proposed rule, DOE aims to amend the DEAR to correct inconsistencies, remove provisions which unnecessarily duplicate coverage contained in the FAR, delete outdated information, and renumber DEAR provisions where required, in order to comport with the FAR numbering. The proposed rule includes revisions to 48 CFR parts 901, 902, 903, 904, 908, 909, 912, 915, 916, 917, 919, 922, 923, 925, 926, 927, 931, 932, 933, 935, 936, 941, 942, 945, 951, 952, and 970.

II. Section-by-Section Analysis

- Section 901.103: Currently this section provides that the DEAR is issued and amended by the Senior Procurement Executive (SPE) and the National Nuclear Security Administration (NNSA). DOE proposes to amend this section to clarify that (1) references throughout the DEAR to the SPE refers to both the DOE SPE and the NNSA SPE, unless otherwise indicated; (2) the SPEs may approve deviations to the DEAR both together and individually; and (3) except for those authorities designated as non-delegable, the SPEs are delegated those authorities assigned to the Agency Head in the FAR.
- Section 901.301–70: This section states that DOE will maintain an Acquisition Guide. DOE proposes to redesignate this section as 901.301–70 and remove the paragraph designation to conform to standard CFR formatting. DOE proposes to revise the newly redesignated section to update the website address to access the Acquisition Guide.
- Subpart 901.4: DOE proposes to add this new subpart to address deviations from the DEAR. The new subpart consists of section 901.401, which provides a definition for what constitutes a deviation from the DEAR; and sections 901.403 and 901.404, which provide instructions to acquisition personnel for preparing and submitting requests for individual deviations and class deviations respectively.

• Section 901.602–3: DOE proposes to amend this section to increase the threshold for the ratification authority delegated to heads of contracting activity (HCAs) for unauthorized commitments of $250,000 or less. A threshold of $25,000 has been in the DEAR for decades and needs to be updated to account for inflation and associated increases in the Simplified Acquisition Threshold (SAT), which was the original basis for the $25,000 threshold.

• Sections 901.603–1 and 901.603–70: DOE proposes to amend these sections to update references to two DOE orders.

• Section 902.101: DOE proposes to amend the definition of Senior Procurement Executive to reflect a change in the name of the office held by the DOE SPE and the NNSA SPE.

• Section 903.104–7: DOE proposes to amend this section to allow reviews to be conducted by the individual one level above the contracting officer. The regulations at FAR 3.104–7 provide for higher-level review and concurrence within DOE by an individual designated in accordance with agency procedures. For violations or possible violations, the Department decided that this review and concurrence was better undertaken by those with procurement authority and not legal counsel whose role is better aligned with providing advice to those conducting the review and concurrence. Nothing in these changes prevents access to counsel by those with procurement authority.

• Section 903.1003: DOE proposes to add this new section in order to supplement the FAR subpart 3.10 coverage of Contractor Code of Business Ethics and Conduct. The amendatory language articulates the need for contractors to identify themselves, particularly when communicating on behalf of DOE, to ensure that all parties know the status of individuals as contractor personnel.

• Section 903.1004: DOE proposes to amend this section to prescribe a new clause at 48 CFR 952.203–1, Identification of Contractor Employees, for all solicitations and contracts for services over the micro-purchase threshold. This clause requires contractors to use standard measures to ensure that contractors and their employees properly identify themselves as contractors in all DOE internal and external communications so that all parties are aware of their status as contractor personnel. The proposed rule also makes minor editorial changes to the content of the section for the purpose of improving clarity and readability and updates the website address.

• Section 904.401: DOE proposes to amend this section to (1) revise the definition of ''access authorization'' by including the citation to special nuclear material under the Atomic Energy Act, Executive Order 12968, and 10 CFR part 710 for more specificity; (2) add a definition of ''Counterintelligence'' previously located in part 970 but proposed to be relocated here because the term is included in revisions to other sections in this part; and (3) amend the definition of ''Classified Information'' for clarity to also include ''Classified National Security Information'' and ''Transclassified Foreign Nuclear Information'', and to update the reference to Executive Order 12958 with Executive Order 13526 which revoked and replaced Executive Order 12958.

• Section 904.402: DOE proposes to amend this section to reorganize content to conform to the FAR numbering and to add a reference to the DOE Organization Act of 1977, as amended and update the reference to Executive Order 12958 with Executive Order 13526 which revoked and replaced Executive Order 12958. DOE also proposes to relocate text about DOE's counterintelligence program from section 970.0404–2(b). Part 970 primarily concerns management and operating (M&O) contracts, but counterintelligence issues are equally applicable to M&O and non-M&O contracts. Additionally, revisions are proposed to the paragraph on conditional payment of fee in order to align with other changes proposed to the conditional payment of fee clauses in parts 952 and 970 which are discussed in the appropriate places below. Finally, DOE proposes to add a paragraph that points to part 927 for policies and procedures for safeguarding classified information in patent applications and patents.

• Section 904.404: DOE proposes to amend this section to: (1) revise the prescription for the ''Security'' clause at section 952.204–2 to clarify that it is also required to be included in contracts awarded under simplified acquisition procedures, as well as National Security Program contracts under which access to proscribed information is required; (2) make minor editorial changes and add the title to DOE Order 142.3 to the paragraph that discusses the ''Sensitive Foreign Nation Controls'' clause at section 952.204–71; (3) delete the prescription for the clause at section 952.204–76, ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health,'' because that clause, along with the clauses at sections 952.223–76 and 952.223–77, is proposed for removal with the content of those three clauses consolidated into a single new clause at section 952.242–71, which is prescribed elsewhere; and (4) add a prescription for the counterintelligence clause proposed to be located at section 952.204–74 (and previously at section 970.5204–1) because DOE has determined that counterintelligence policy is appropriate for both M&O and non-M&O contracts.

• Section 904.7004: DOE proposes to amend this section in paragraph (a) to update the name of the office that the Contracting Officer must consult in connection with ''Foreign Ownership, Control or Influence (FOCI)'' reviews prior to determining that award or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The reference to the DOE Office of Safeguards and Security is proposed to be changed to the DOE Office of Environment, Health, Safety and Security.

• Section 904.7102: DOE proposes editorial revisions to streamline this section, in paragraph (e), by removing the following extraneous text: ''that has been developed by the Safeguards and Security Lead Responsible Office at the contracting activity.''

• Subpart 904.74: DOE proposes to add this new subpart on DOE Directives. The proposed subpart consists of section 904.7400, which provides general requirements and information, and section 904.7401, which prescribes a new DOE Directives clause at 48 CFR 952.204–78, along with background. Although contractor requirements documents (CRDs) have been integrated into non-M&O contracts for a long time, adding the general information section, the new clause prescription, and the new clause will clarify the process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis.

• Subpart 908.71: DOE proposes to amend subpart 908.71 in order to remove some out-of-date procedures for handling special items. Specifically, sections 908.7103, Office machines; 908.7115, Forms; 908.7116, Electronic data processing tape; and 908.7117, Tabulating machine cards, are proposed for removal.

• Section 909.403: DOE proposes to revise this section to reflect a change in the name of the offices held by the individuals designated as the DOE and NNSA Debarring Official and Suspending Official.

• Section 909.405: DOE proposes to revise this section to replace references to the now defunct Excluded Parties List System (EPLS) with the new System for Award Management (SAM).

• Section 909.407–3: DOE proposes to amend this section in paragraph (e)(1)(vii) to replace a reference to the now defunct EPLS with the new SAM.

• Section 909.507–2: DOE proposes to amend this section to: (1) revise the clause prescription for section 952.209–72, ''Organizational Conflicts of Interest,'' and its Alternate I in paragraph (a) to limit application of the clause to non-M&O contracts since the addition of an M&O specific clause is proposed in part 970; and (2) revise paragraph (b) to reference section 970.0906 where the prescription for the new M&O specific clause is proposed to be located.

• Section 912.301: DOE proposes to add a new section 912.301 to clarify those DEAR clauses that are also required to be included in solicitations and contracts for the acquisition of commercial items, in accordance with 48 CFR 12.301(f).

• Section 915.404–4–70: DOE proposes to revise this section to clarify that DOE's structured profit and fee system for non-management and operating contracts comprises two approaches.

• Section 915.404–4–70–2: DOE proposes to revise this section to correct the errors throughout the table in paragraph (d) by replacing ''items 4.a. thru 4.e.'' with ''items I.a. thru I.e.''.

• Section 915.404–4–72: DOE proposes to revise paragraph (a) of this section to update the reference to fee policy for management and operating contracts from ''970.15404–4–8'' to ''970.1504–1–1 through 970.1504–3.''

• Section 915.408–70: DOE proposes to amend this section to simplify the clause prescription for section 952.215–70, ''Key Personnel,'' and make minor editorial changes.

• Section 916.307: DOE proposes to revise this section to: (1) simplify the prescription for the DEAR ''Allowable Cost and Payment'' clause at section 952.216–7 in paragraph (a); and (2) remove the prescription for section 952.216–15, ''Predetermined Indirect Cost Rates,'' because the FAR clause at 48 CFR 52.216–15 is now considered to be adequate.

• Section 916.504: DOE proposes to revise this section to redesignate paragraph (c) as paragraph (a)(1) to conform with the FAR coverage at 48 CFR 16.504(a)(1) that this language supplements.

• Section 916.505: DOE proposes to revise this section to: (1) redesignate paragraph (b)(6) as paragraph (b)(8) to conform with the FAR coverage at 48 CFR 16.505(b)(8) that this language supplements and update the corresponding FAR citation accordingly; and (2) update the office name from ''Office of Procurement and Assistance Management'' to ''Office of Acquisition Management''.

• Subpart 917.6: DOE proposes several changes to this subpart. Editorial changes are proposed in sections 917.600(b) and 917.602(b) to remove obsolete references to ''performance-based management contracts''. Likewise, section 917.601, which defines ''performance-based management contract'' and ''performance-based contracting'' is also proposed to be removed. Those terms and those references to performance-based management contracts are considered to be unnecessary since all management and operating contracts employ, to the maximum extent practicable, performance-based contracting concepts and methodologies. Editorial changes are also proposed in section 917.602(c) to streamline the content of that paragraph.

• Section 917.7402: DOE proposes to revise paragraphs (b) and (c)(4) of this section to update the referenced DOE order from DOE Order 430.1B to the current DOE Order 430.1C.

• Subpart 919.70: DOE proposes to amend this subpart to streamline the coverage of DOE's Mentor-Protege program. To that end, sections 919.7001 and 919.7002 are proposed to be removed as unnecessary. Section 919.7002 is unnecessary as these terms are adequately defined in the FAR. Section 919.7003 is revised to: (1) add a new paragraph (a) with content taken from the removed section 919.7001; (2) redesignate existing paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively; and (3) make minor editorial changes. Sections 919.7004 and 919.7005 are proposed to be removed as their contents are purely administrative. DOE intends to issue guidance on the process in lieu of regulations. Section 919.7006 is revised to make minor editorial changes to paragraphs (a) and (b) and add a new paragraph (c) to clarify that mentor firms may be reimbursed for allowable developmental assistance costs for protege firms under the contract costs. Sections 919.7007 through 919.7013 are proposed to be removed as their contents are purely administrative. DOE intends to issue guidance on the process in lieu of regulations. Section 919.7014 is revised to change the prescription for the provision at section 952.219–70 to require insertion in all solicitations that include the clause at 48 CFR 52.219–9, ''Small Business Subcontracting Plan,'' rather than insertion in all solicitations with an estimated value in excess of the simplified acquisition threshold. DOE considers this change to be appropriate since the mentor protégé program is geared towards subcontracting as a development tool.

• Section 922.101–70: DOE proposes to add this new section to describe situations where labor policies applicable to M&O contracts may also apply to non-M&O contracts. DOE labor policies for M&O contracts are located at 48 CFR part 970, subpart 970.22. The policies therein are applicable to non-M&O contracts where the contract work had been previously performed under a DOE Management and Operating contract; and/or the Contractor is required to employ all or part of the former Contractor's workforce; or contracts designated by the Senior Procurement Executive. The labor policies at 48 CFR part 970, subpart 970.22, are reiterated here to highlight their application to certain non-M&O contracts.

• Subpart 922.4: DOE proposes to add this new subpart with content previously located in section 970.2204–1–1, but better placed in part 922 since it is applicable to both non-M&O and M&O contracts. The existing content is revised to update references to the Davis-Bacon Act with the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction)) as currently referenced in 48 CFR 22.403–1 and to remove information that unnecessarily duplicates content already set forth in 48 CFR 22.404 through 22.404–12.

• Section 923.002: DOE proposes to remove this section. Paragraph (a) is removed because it conveys policy from revoked Executive Order 13423 and duplicates coverage in the FAR. The prescription at paragraph (b) is removed because revoked Executive Order 13423 was the basis for that prescription and for the clause at section 970.5223–6.

• Section 923.101: DOE proposes to redesignate this section as section 923.170 to maintain consistency with FAR numbering and revise the content to align with current statutory, regulatory, and executive order requirements and to remove an out-of-date hyperlink.

• Section 923.102: DOE proposes to redesignate this section as section 923.171 to maintain consistency with FAR numbering.

• Section 923.103: DOE proposes to redesignate this section as section 923.172 to maintain consistency with

FAR numbering and revise the content to: (1) make minor editorial changes; (2) remove the reference to Alternate I to section 952.223–78, as that alternate is proposed to be removed as unnecessary as a result of proposed revision to the base clause; and (3) remove prescriptions to FAR clauses that are already prescribed in 48 CFR chapter 1, and are not necessary to be prescribed here.

• Section 923.903: DOE proposes to revise this section to correctly state the clause number for the FAR Environmental Management Systems clause as ''52.223–19'', whereas the current text has ''52.223–XX''.

• Section 923.7002: DOE proposes to revise this section to: while retaining the current policy, state it more clearly and succinctly; update references to reflect new locations of clauses; add references to clause prescriptions; and update office titles.

• Section 923.7003: DOE proposes to revise this section to: (1) in paragraph (a), update the name of the office which the Contracting Officer is required to consult with in making a decision to include or not include environmental, safety, and health clauses and insert a reference to the appropriate coverage for M&O contracts; (2) consolidate paragraphs (f) and (g) into one paragraph (f) and revise it to state the prescription for the Conditional payment of fee clause more clearly and succinctly and update the reference to the clause; and (3) redesignate paragraph (h) as paragraph (g).

• Section 925.1001: DOE proposes to revise this section to update the name of the ''Office of Procurement and Assistance Management'' to ''Office of Acquisition Management'' and the office name of the NNSA Deputy Associate Administrator from ''Acquisition and Project Management'' to ''Office of Partnership and Acquisition Services''.

• Section 926.7001: DOE proposes to revise this section to reflect the addition of Qualified HUBZone small business concerns to the list of Energy Policy Act 1992 target groups by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135).

• Section 926.7004: DOE proposes to revise this section to remove the outdated reference to Standard Industrial Classification (SIC) 8711 and add in its place a reference to the North American Industry Classification System code 541330.

• Section 926.7005: DOE proposes to revise this section to reorganize the content to remove the separate paragraph on subcontracts as this content is unnecessarily duplicative of the prescriptions for solicitation provisions and contract clauses in section 926.7007.

• Section 926.7006: DOE proposes to revise this section to reorganize and streamline content to remove obsolete and unnecessary reporting requirements.

• Section 926.7007: DOE proposes to revise this section in the prescription for the clause at 952.226–72, ''Energy Policy Act Subcontracting Goals and Reporting Requirements'' to update the dollar threshold from $500,000 ($1M for construction) to $750,000 and ($1.5M for construction) to conform to the FAR threshold for requiring a subcontracting plan at 48 CFR 19.702.

• Subpart 926.71: DOE proposes to amend this subpart to: (1) revise section 926.7101 to update the citation in the first sentence from 42 U.S.C. 7474h to 50 U.S.C. 2704(c)(2); (2) revise section 926.7103 to make the same update to the citation in the first sentence of paragraph (a); and (3) revise section 926.7104 to change the clause title to add the words ''Workforce Restructuring and'' before '' Displaced Employee Hiring Preference'' (in order to distinguish this from hiring preferences tied to the Service Contract Act) and revise the clause prescription to add a parenthetical that makes clear that the clause is for both M&O and non-M&O contracts.

• Sections 927.200 and 927.201–1: The proposed rule removes section 927.200 and adds the content of that section to section 927.201–1 to better conform with FAR numbering and section headings. Additionally, the proposed rule broadens the requirement in section 927.201–1 to consult with Patent Counsel regarding the use of the Patent and Copyright Infringement Liability clause, which includes the Authorization and Consent clause referenced currently, to fully address indemnity in contracts based on the work being performed. but instead requires consultation regarding the use of the Patent and Copyright Infringement Liability clause in certain situations.

• Sections 927.202, 927.202–5, and 927.206: The proposed rule removes section 927.206, ''Refund of Royalties,'' and redesignates sections 927.206–1, ''General,'' and 927.206–2, ''Clause for refund of royalties,'' as new sections 927.202, ''Royalties,'' and 927.202–5, ''Solicitation provisions and contract clause,'' respectively. These changes are proposed in order to conform to the FAR numbering and section headings which this coverage supplements.

• Sections 927.203 and 927.203–1: The proposed rule redesignates sections 927.207 and 927.207–1 as new sections 927.203 and 927.203–1 respectively and revises the section heading for section 927.203 (formerly section 927.207). These changes are proposed in order to correspond with the FAR numbering and section headings which this coverage supplements.

• Section 927.302: The proposed rule redesignates section 927.300 as section 927.302 and revises the section heading to correspond with the FAR numbering and section headings which this coverage supplements. The proposed rule also makes minor reorganization and editorial changes to the content of new section 927.302 for the purpose of improving clarity and readability.

• Section 927.302–70: The proposed rule redesignates current section 927.302 as section 927.302–70 and revises the section heading in order to accommodate the changes to current section 927.300 described above. In addition, a new paragraph (a) is added to include a definition of ''background patent'' similar to the definition found in the new Alternate I of section 952.227–13 for the purpose of improving clarity of the regulation. Current paragraphs (b) and (c) are replaced with a new paragraph (c) to reflect DOE's determination that the requirement of licensing background patents should only be permitted in certain situations approved by DOE Patent Counsel with concurrence of a DOE program official. This policy is implemented in new section 927.303(d)(5) by moving the paragraph regarding background patents from the clause at section 952.227–13 to an Alternate I so that it only applies to certain contracts.

• Section 927.303: The proposed rule revises section 927.303 to correspond with the FAR numbering and to make additions to instructions located in 48 CFR 27.303. The proposed rule adds paragraph (a)(4) to direct the Contracting Officer to subpart 970.27 for certain decontamination and decommissioning activities and the building and/or operations of other DOE facilities. Additionally, 48 CFR 27.303(d) provides that DOE will insert its specific patent rights clauses according to agency procedures. Therefore, section 927.303(d) outlines the use of the various patent clauses such as the clause at 48 CFR 952.227–13 or 37 CFR 401.14 depending on whether the contractor is a large or small business or university.

○ DOE proposes in paragraph (d)(2) that contracts with domestic small business firms or nonprofit organizations use the clause at 37 CFR 401.14 instead of the clause at 48 CFR 952.227–11 because DOE has not

modified 48 CFR 48.952.227–11 to keep up with changes in the standard patent clause for these entities, while 37 CFR 401.14 is regularly updated. However, 37 CFR 401.14 has certain provisions requiring agency implementing regulations, which DOE addresses in a prescription for new Alternate I.

○ The most significant update is necessary to implement DOE's Declaration of Exceptional Circumstance that requires contractors, at any tier, to substantially manufacture any subject inventions in the United States. Alternate II for domestic small business firms or nonprofit organizations adds both the agency implementing regulations from Alternate I and the U.S. substantial manufacturing requirements. For 952.227–13, an Alternate II is used to implement the U.S. manufacturing requirement, as addressed in section 927.303(d)(6).

• Section 927.304: The proposed rule revises section 927.304 to make minor editorial changes and to replace the reference to the clause at section 952.227–11, which is proposed for revision, with the clause at 37 CFR 401.14. The clause at section 952.227–11 is not regularly updated while the clause at 37 CFR 401.14 does receive regular updates.

• Subpart 927.4: The proposed rule revises the heading of subpart 927.4 to read ''Rights in Data and Copyrights'' to conform to the FAR heading at 48 CFR part 27, subpart 27.4, which this subpart supplements.

• Section 927.401: The proposed rule adds section 927.401 to provide a definition of ''technical data''. The regulations at 48 CFR 27.401 define ''data'' to include ''technical data'' and ''computer software''. DOE wants to have a clear definition of what technical data encompasses since it relates directly to information sent to DOE's Office of Scientific and Technical Information.

• Sections 927.402, 927.402–1, and 927.402–2: The proposed rule removes sections 927.402 and 927.402–1, and redesignates section 927.402–2 as section 927.402 to conform to FAR numbering, which these sections supplement. The content of section 927.402–1 is added to new section 927.406 and revised for clarity. Finally, DOE also proposes to revise the introductory language of the newly redesignated section 927.402 to add a reference to scientific and technical information (STI) because this is the term used at the Office of Scientific and Technical Information (OSTI) where DOE's publicly available technical data is stored.

• Section 927.403: The proposed rule removes section 927.403, which outlines when DOE Contracting Officers and Patent Counsel make determinations as part of the acquisition and use of technical data, and adds its content to newly added section 927.406–4 for organizational purposes.

• Sections 927.404 and 927.404–70: The proposed rule:

○ Redesignates section 927.404–70 as section 927.404–71 for organizational purposes and revises the newly redesignated section to replace the reference to 48 CFR 927.409(a) with 48 CFR 52.227–14 to reflect changes to the prescription at 48 CFR 927.409(a);

○ Redesignates section 927.404 as section 927.404–70 for organizational purposes;

○ Revises the newly redesignated section 927.404–70 to update the instructions on when to use 48 CFR 52.227–14 as supplemented by this subpart, as well as the use of 48 CFR 52.227–16; and

○ Relocates paragraphs (g)(4), (l), and (m) of section 927.404–70 to portions of new section 927.406–4 and revised section 927.409.

• Sections 927.406 and 927.406–4: FAR 27.406 is for Acquisition of data with sections 27.406–1 through 27.406–3. The proposed rule adds section 927.406, Acquisition of data, and section 927.406–4, Acquisition and use of technical data, to conform with the numbering and headings of the FAR, which these sections supplement. Section 927.406–4(a) and (b) in the proposed rule address several statutory changes that have been enacted, such as EPAct 2005 and the DOE Energy Research and Innovation Act. EPACT mandates that DOE maintain publicly available collection of Scientific Technical Information funded by the agency which is achieved by the Office of Scientific and Technical Information. DOE Energy Research and Innovation Act has a similar mandate for DOE to maintain a public database populated with information on unclassified research and development projects as well as relevant literature and patents. Additionally, the proposed rule relocates content formerly located at section 927.402–1(b) to new section 927.406–4(c) for organizational purposes and revises the text for clarity and to update references. Likewise, the proposed rule relocates content formerly located at section 927.403 to new section 927.406–4(d) for organizational purposes. And finally, the proposed rule relocates content formerly located at section 927.404(g)(4) and (l) to new section 927.406–4(e) and (f), respectively, for organizational purposes and revises the text for clarity and to update references.

• Section 927.409: The proposed rule revises section 927.409 by removing the contract clause at paragraph (a)(1), which permitted the DOE Patent Counsel to only approve copyright of software. In lieu of that clause, new paragraph (a) instructs the contracting officer to use the definitions at Alternate I of 52.227–14 and a new Alternate VIII of 48 CFR 952.227–14, Rights in Data-General, which allows DOE Patent Counsel to approve copyright of all technical data (including software) of a subcontractor. In addition, the proposed rule reorganizes the section so that paragraph (a)(2) is now a new paragraph (b) that outlines special treatment of certain data. Paragraph (b)(1)(i) requires Patent Counsel to insert a new Alternate I of 48 CFR 952.227–17 to change paragraph (c)(1)(ii) of 48 CFR 52.227–17, Rights in Data-Special Works, such that DOE Patent Counsel can approve the subcontractor to assert copyright in all technical data of subcontractor and transfer to the Government or other entity. Paragraphs (b)(1)(ii) through (vii) of the proposed section remain the same as current paragraphs (a)(2)(ii) through (vii) with some minor changes to streamline content and update references. However, Paragraph (b)(1)(viii) is added to contain an instruction located in current subcontract paragraph (a)(1) regarding the use of Alternate IV of 48 CFR 52.227–14, Rights in Data-General, to be used with educational institutions. The prohibition for use of Alternate IV for any software has been changed to allow for copyright assertion when creating open source software. Paragraph (b)(1)(ix) describes the use of Alternate VI, as provided at 48 CFR 952.227–14, Rights in Data—General. These instructions are being relocated from current section 927.404 (l) to section 927.409(b)(1)(ix) for organizational purposes and revised accordingly to give further guidance on when to require limited licensing of Limited Rights Data and Restricted Computer Software of the subcontractor. Finally, paragraph (b)(1)(x) contains instructions for using Alternate VII as provided at 48 CFR 952.227–14, Rights in Data—General, which are currently located at 927.404(m) to limit the contractor's use of DOE restricted data. Section 927.409(d) is an expansion of the instructions located in current section 927.409(h) and 48 CFR 27.409(d). Lastly, the current paragraphs (s) and (t) of section 927.409 are relocated to paragraphs (m) and (n), respectively, to

conform with the numbering of 48 CFR 27.409.

• Section 931.205–18: DOE proposes to make minor editorial revisions to this section in order to improve clarity.

• Section 931.205–47: DOE proposes to revise this section to update the citation in the definition of ''Employee whistleblower action'' from 42 U.S.C. 7239 to 50 U.S.C. 2702.

• Section 932.970: DOE proposes to revise this section in paragraph (b) to clarify that: (1) Contracting Officers can specify accelerated payment dates upon making a written determination (on a case-by-case basis) that a shorter contract financing payment cycle will be beneficial to the Government by reducing the contractor's working capital requirements; and (2) Whenever a contract specifies payment due dates that are sooner than those required under the relevant prompt payment requirements, the contract will permit the Contracting Officer to unilaterally authorize additional time for review of invoices if needed to perform an adequate review prior to payment. These changes are necessary to ensure that accelerated payments are only approved when doing so is determined to be beneficial to the Government, and adequate time for review of invoices is maintained.

• Section 932.971: DOE proposes to add this section concerning electronic submission of invoices/vouchers and to prescribe a new clause at 48 CFR 952.232–7. These changes are intended to establish DOE's strong preference for electronic submission of vendor invoices and to provide standardized instructions for such submissions. While electronic submission is preferred, other methods of submission can be approved after consultation with the Office of the Chief Financial Officer.

• Subpart 932.70: DOE proposes to remove this subpart in its entirety, as DOE Loan Guarantee Authority is regulated at 10 CFR part 609.

• Section 933.103: DOE proposes to revise this section to: (1) reorganize and renumber the paragraphs to conform to the FAR numbering at 48 CFR 33.103 which this section supplements; (2) make minor editorial revisions for clarity; and (3) clarify that DOE does not accept or adjudicate protests from prospective subcontractors.

• Section 933.104: DOE proposes to revise this section to reorganize content to conform to the FAR numbering at 48 CFR 33.104 which this section supplements, streamline content, and make minor editorial revisions for clarity.

• Section 933.106: DOE proposes to revise this section to simplify the prescription for the solicitation provision at section 952.233–2 such that it is required to be inserted whenever the provision at 48 CFR 52.233–2 is included. In addition, the proposed rule removes the prescriptions for the provisions at sections 952.233–4 and 952.233–5 because the content of those provisions is being added to the provision at section 952.233–2.

• Section 935.010: DOE proposes minor editorial revisions to this section to improve clarity, and to add a sentence at the end of paragraph (c) that clarifies that STI products identified in DOE Order 241.1B are reportable to OSTI whether publicly releasable, controlled unclassified information or classified.

• Section 935.070: DOE proposes to simplify this section by making minor editorial revisions and removing the definition paragraph, since research misconduct is already defined in 10 CFR part 733.

• Section 936.202–71: DOE proposes to remove this section because its basis (Executive Order 13514) has been revoked.

• Section 941.201–70: DOE proposes to revise this section to: (1) revise the section heading to conform to 48 CFR 41.201 which this section supplements; (2) revise the text to add a reference to the Energy Policy Act of 2005 (25 U.S.C. 3502) and integrate new Office of Federal Energy Management Programs (FEMP) policy, given that DOE Order 430.2B has been rescinded.

• Section 942.705–1: DOE proposes to revise this section to remove paragraph (a)(3) as its content is outdated.

• Section 942.705–3, 942.705–4, 942.705–5: DOE proposes to remove sections 942.705–3 through 942.705–5 as they only convey procedures internal to the agency that do not need to be covered in this regulation.

• Subpart 942.71: DOE proposes to add this new subpart to provide an explanation of the need for and the use of the new clause proposed at section 952.242–71, ''Conditional Payment of Fee, Profit, and Other Incentives,'' which is also discussed in sections 904.402, 923.7002, and 923.7003. The new clause's prescription is also added.

• Section 945.000: DOE proposes to revise this section to account for situations where the personal property management policies in 41 CFR chapter 109 may also apply to certain non-M&O contracts.

• Section 945.101: DOE proposes to remove this section as the definitions are either unnecessary or are already defined in the FAR.

• Section 945.102–70: DOE proposes to remove this section as the FAR coverage is considered to be adequate.

• Section 945.102–71: DOE proposes to remove this section as the FAR coverage is considered to be adequate.

• Section 945.570–1: DOE proposes to revise this section to update the reference to the ''Personal Property Policy Division'' with the ''Office of Asset Management.''

• Sections 945.602, 945.602–3, and 945.602–70: DOE proposes to remove these sections as their content is adequately addressed in 41 CFR chapters 102 and 109.

• Section 945.603: DOE proposes to remove this section as its content is adequately addressed in 41 CFR chapters 102 and 109.

• Section 945.670–1: DOE proposes to revise this section to update the currently incorrect reference (48 CFR 45.606–3) to 48 CFR 2.101.

• Section 945.670–3: DOE proposes to remove this section because the content is adequately addressed in 41 CFR chapter 109.

• Section 945.671: DOE proposes to revise this section to add a reference to ''41 CFR chapter 109'' in place of an outdated reference to ''41 CFR 109–45.50 and 45.51 or its successor''.

• Section 951.102: DOE proposes to revise this section, in paragraph (c)(1), to remove the obsolete reference to the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) and update the reference to the ''Office of Resource Management within the Headquarters procurement organization'' to the ''Systems Division within the Office of Acquisition Management.''

• Section 952.203–1: DOE proposes to add this clause ''Identification of Contractor Employees'' to require contractors to use standard measures to ensure that contractors and their employees properly identify themselves as contractors in all DOE internal and external communications so that all parties are aware of their status as contractor personnel.

• Section 952.204–2: DOE proposes several amendments to the ''Security Requirements'' clause. Specifically, DOE proposes to: (1) consolidate definitions previously located in separate paragraphs (c) through (g) into a single paragraph (a), and add definitions of ''contracting officer'', ''contract'', ''contractor'', ''cyber system'' and ''special access program''; (2) make minor editorial revisions and update references throughout; and (3) add a reference in the last paragraph to clarify that facility clearance may be granted prior to award or after award of

a subcontract in accordance with the clause at 48 CFR 952.204–73, ''Facility Clearance''.

• Section 952.204–70: DOE proposes to revise the ''Classification/Declassification'' clause by reorganizing its content, with definitions being brought together into a separate paragraph (a). Additionally, minor editorials changes were made to improve clarity.

• Section 952.204–73: DOE proposes to amend the ''Facility Clearance'' clause to make minor editorial revisions throughout and, in paragraph (d), to include both a pre-award facility clearance process and an alternative post-award process. The current 48 CFR 952.204–73 requires a full Facility Clearance prior to the award of a contract requiring access to classified information, and prior to granting any Interim Access Authorizations to key management personnel. DOE proposes to revise the section to provide a process that permits contract award prior to granting a full Facility Clearance, and to permit contract award prior to granting Interim Access Authorizations to key management personnel. This alternate post-award process will enhance efficiencies in awarding contracts while ensuring security requirements are met.

• Section 952.204–74: DOE proposes to move the ''Counterintelligence'' clause from section 970.5204–1 to this new section, as it is pertinent to both M&O and non-M&O contracts. Minor editorial revisions are also proposed.

• Section 952.204–76: DOE proposes to remove this clause, ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information,'' to reflect that section 952.242–71, Conditional Payment of Fee, Profit or Incentives, a new clause, is proposed to be added. The new clause replaces three existing clauses (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health).

• Section 952.204–77: DOE proposes to revise this section, in the introductory text, to update the citation for the clause prescription and make minor editorial changes.

• Section 952.204–78: DOE proposes to add this new clause, ''DOE Directives'' in order to clarify the policy and procedures for integrating directives into non-M&O contracts.

• Section 952.215–70: DOE proposes to revise the ''Key Personnel'' clause to make minor editorial changes to improve clarity.

• Section 952.216–15: DOE proposes to remove the ''Predetermined Indirect Cost Rates'' clause as the corresponding FAR clause at 48 CFR 52.216–15 is considered to be adequate.

• Section 952.219–70: DOE proposes to revise the ''DOE Mentor-Protégé Program'' clause to reflect the fact that the program has been broadened to include all small business concerns, remove unnecessary procedural content and make minor editorial revisions for clarity.

• Section 952.223–71: DOE proposes to revise this section to add a non-M&O version of the ''Integration of Environment, Safety, and Health into Work Planning and Execution'' clause on the basis that the requirement is applicable to both non-M&Os and M&Os. The section language previously redirected the reader to a clause for M&O contracts.

• Section 952.223–75: DOE proposes to revise this section in the introductory text to update the location of the clause prescription from section 923.7003(h) to section 923.7003(g).

• Sections 952.223–76 and 952.223–77: DOE proposes to remove the ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health'' clause and the ''Conditional Payment of Fee or Profit—Protection of Worker Safety and Health'' clause to reflect that 952.242–71, Conditional Payment of Fee, Profit or Incentives, a new clause, is added. The new clause replaces three existing clauses (952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health).

• Section 952.223–78: DOE proposes to revise the ''Sustainable Acquisition Program'' clause to streamline requirements, to obviate the need for Alternate I to the clause, and to eliminate outdated references and areas of redundancy with FAR coverage.

• Section 952.226–70: DOE proposes to revise the ''Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992'' clause to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) and to make minor editorial revisions.

• Section 952.226–71: DOE proposes to revise this clause by updating the citation for the clause prescription in the introductory text and replacing ''Energy Policy Act'' where it appears in the clause title and text with ''Energy Policy Act 1992'' or ''EPAct 1992'' in order to more clearly identify the source of these requirements. Additionally, minor editorial changes are proposed for paragraph (a) of the clause for streamlining purposes.

• Section 952.226–72: DOE proposes to amend the ''Energy Policy Act of 1992 Subcontracting Goals and Reporting Requirements'' clause to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) as well as to replace references to the outdated Standard Form (SF) 294 and SF 295 with references to the Individual Subcontract Report and or Summary Subcontract Report in the Electronic Subcontracting Reporting System (ESRS).

• Section 952.226–73: DOE proposes to amend this section to revise the section heading and clause title and to reflect the addition of a fourth target group by the Small Business Reauthorization Act of 1997 (Pub. L. 105–135).

• Section 952.226–74: DOE proposes to amend this section to revise the section heading and clause title by adding the words ''Workforce Restructuring and'' before ''Displaced Hiring Preference.'' This proposed revision is intended to clearly tie this clause to workforce restructuring and distinguish it from other hiring preferences related to the Service Contract Act.

• Section 952.227–9: DOE proposes to revise the ''Refund of Royalties'' clause to require contractors with contracts greater than five years in duration to furnish a statement of royalties paid or required to be paid in connection with performing the contract every five years, and to make minor editorial revisions.

• Section 952.227–11: Since 37 CFR 401.14, Standard Patent Rights, is updated regularly, DOE has decided to use that clause in preference to 48 CFR 52.227–11. However, 37 CFR 401.14 has sections requiring agency implementing regulations. Therefore, DOE proposes to revise section 952.227–11 to replace the full clause text with two alternates. Alternate I is used to supplement the standard patent rights clause to include DOE's implementing regulations. For example, paragraph (g)(2) requires the Contracting Officer to direct whether to include this clause in certain subcontracts. Also, paragraph (l) requires reports to be uploaded into

iEdison invention management system. DOE has recently issued a Declaration of Exceptional Circumstance (DEC) to require substantial US manufacture of subject inventions funded by many DOE programs. Alternate II addresses the modifications and additions to 37 CFR 401.14 to implement this DEC by adding paragraphs (m) and (n).

• Section 952.227–13: DOE proposes to amend the ''Patent Rights—Acquisition by the Government'' clause to update references and account for statutory changes. Paragraph (k) has been moved to a new alternate I to provide for a right to require licensing of third parties to background inventions only when deemed necessary. Also, a new Alternate II has been added to implement the U.S. Competitiveness requirement for DOE funding programs that require it.

• Section 952.227–14: DOE proposes to amend the ''Rights in Data—General'' clause to add a new Alternate VIII which addresses the approval by DOE Patent Counsel of all types of data by subcontractors of the M&O Contractor. Minor editorial revisions and revisions to update references are also proposed.

• Section 952.227–17: DOE proposes to add a new ''Rights in Data—Special Works'' clause which supplements the FAR clause at 48 CFR 52.227–17 to permit Patent Counsel to direct the subcontractor to assert copyright and transfer to the Government or M&O Contractor.

• Section 952.227–82: DOE proposes to remove the ''Rights to proposal data'' clause on the basis that the corresponding FAR clause at 48 CFR 52.227–23 is considered to be adequate.

• Section 952.227–84: DOE proposes to amend this section to revise the introductory text to correctly specify the location of the clause prescription and to revise the clause text in the third sentence to replace the reference to ''DEAR 952.227–11'' which is proposed for removal, with ''37 CFR 401.14.''

• Section 952.231–71: DOE proposes to revise the ''Insurance—Litigation and Claims'' clause, in paragraph (f)(2) to explicitly identify the property clause at 48 CFR 970.5245–1 that defines ''contractor's managerial personnel.''

• Section 952.232–7: As detailed in the description to section 932.971, DOE proposes to add this ''Electronic Submission of Invoices/Vouchers'' clause to ensure clarity on electronic invoicing and payment procedures.

• Sections 952.233–2, 952.233–4, and 952.233–5: DOE proposes to revise the ''Service of Protest'' clause to add the provisions previously located at sections 952.233–4 and 952.233–5, since all three provisions had the same prescription and interrelated subject matter. Sections 952.233–4 and 952.233–5 are proposed for removal.

• Section 952.242–71: DOE proposes to add this new ''Conditional Payment of Fee, Profit or Incentives'' clause to replace three existing clauses (section 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, section 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, and section 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health). Like the previous clauses, the new clause provides for a reduction in payment to a contractor if the contractor fails to meet a performance requirement relating to environment, safety and health or security or safeguarding of restricted data and other classified information. However, the new clause also allows for a reduction in payment if the contractor fails to meet a performance requirement related to business and financial systems. This addition was included because DOE believes adding emphasis to the importance of strong business and financial systems to its fee policy will enhance the effectiveness of its contract administration and its mission accomplishment. The new clause also includes updated references and reflects revisions made for clarity.

• Section 952.245–2: DOE proposes to revise this section to update the clause prescription to conform with the current FAR.

• Section 952.245–5: DOE proposes to revise this section to update the clause prescription to conform with the current FAR.

• Section 952.250–70: DOE proposes to revise the ''Nuclear Hazards Indemnity Agreement'' clause to correctly reflect the current underlying statute and to eliminate ''effective date'' considerations not germane to contracts awarded in 2020 and beyond. DOE proposes to update 48 CFR 952.250–70 to delete Note 1 in accordance with 2005 Public Law 109–58, sec. 610(b), which amended Atomic Energy Act (AEA) section 234A(d) to eliminate the exclusion from civil penalties for certain identified non-profit institutions. Prior to amendment, AEA section 234A(d) provided that the provisions of AEA section 234A on imposition of civil penalties would not apply to the University of Chicago for activities associated with Argonne National Laboratory; the University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory; American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratories; Universities Research Association, Inc. for activities associated with FERMI National Laboratory; Princeton University for activities associated with Princeton Plasma Physics Laboratory; the Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory

• Section 970.0100: Section 970.0100 indicates that part 970 of the DEAR provides DOE policies, procedures, provisions, and clauses that implement and supplement the FAR and other parts of the DEAR for the award and administration of M&O contracts. DOE proposes to revise this section to clarify that part 970 does not apply to non-M&O contracts, except as approved by the cognizant SPE, or as otherwise prescribed in the DEAR.

• Section 970.0371–8: Section 970.0371–8 requires that certain information be included in a written disclosure statement made by an employee of an M&O contractor. In the proposed rule, DOE would require each disclosure statement to include an acknowledgement that the employee has read and is familiar with DOE Order 486.1, Department of Energy Foreign Government Sponsored or Affiliated Activities. Additionally, section 970.0371–8 already requires that each disclosure statement include an acknowledgement that the employee has read and is familiar with the DOE publication entitled ''Reporting Results of Scientific and Technical Work Funded by DOE''. In the proposed rule, DOE would update the title of that publication to reflect the publication's current title.

• Section 970.0371–9: Section 970.0371–9 requires a contracting officer to insert the clause at section 970.5203–3, Contractor's Organization, in all M&O contracts and provides that in paragraph (a) of that clause, the words ''and managerial personnel (see 970.5245–1(j))'' may be inserted after ''(see 952.215–70)''. In the proposed rule, DOE would update the cross reference from ''970.5245–1(j)'' to ''970.5245–1(k)'' to reflect the new location of that paragraph under the proposed rule.

• Section 970.0404–1: Section 970.0404–1 provides definitions of several terms. The proposed rule would remove that section because the

definitions of those terms are provided in section 904.401 and duplication in this subpart is unnecessary.

- Section 970.0404–2
  - Paragraph (a) of section 970.0404–2 points to several places where the reader may find information about the National Industrial Security Program, information concerning contractor ownership when national security or atomic energy information is involved, and information regarding contractor ownership involving national security program contracts. Paragraph (b) of section 970.0404–2 provides that all DOE elements should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities. The regulations in 48 CFR part 904 contain DOE policies, definitions, provisions, and clauses associated with the safeguarding and security of classified information. In order to avoid unnecessary duplication, the proposed rule replaces the content of paragraphs (a) and (b) with a new paragraph (a) that points the reader to that part.
  - Paragraph (c) of section 970.0404–2 provides that for DOE M&O contracts and other contracts designated by the Senior Procurement Executive, or designee, the clause entitled ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts'' implements the requirements of section 234B of the Atomic Energy Act regarding the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of restricted data or other classified information. The proposed rule makes minor editorial revisions to this text for streamlining purposes and redesignates the content as paragraph (b) of section 970.0404–2.
- Section 970.0404–4: Paragraph (a) of section 970.0404–4 requires a contracting officer to include the clause located at 48 CFR 5204–1 in certain contracts. Paragraph (b) of section 970.0404–4 points the contracting officer to sections 904.404 and 904.7103 for the prescription of solicitation provisions and contract clauses relating to safeguarding classified information and foreign ownership, control, or influence over contractors. The proposed rule would remove section 970.0404–4 because (1) the proposed rule relocates the requirement in paragraph (a) of that section to paragraph (d)(7) of section 904.404 and (2) the references to sections 904.404 and 904.7103 are unnecessary and duplicative of those sections.
- Section 970.0407–1–3: DOE proposes to amend this section to revise the prescription for the ''Access to and Ownership of Records'' clause to reflect the addition of a non-M&O version of the ''Integration of Environment, Safety, and Health into Work Planning and Execution'' clause and to make minor editorial changes.
- Section 970.0801–2: DOE proposes to revise this section to replace the reference to the Federal Property Management Regulation at 41 CFR part 101–43 with a reference to the Federal Management Regulation at 41 CFR chapter 102. This change is necessary because the General Services Administration (GSA) is phasing out the Federal Property Management Regulation and transitioning its sections to the Federal Management Regulation.
- Subpart 970.09: The proposed rule would amend this subpart to articulate a uniform policy on conflicts of interest for M&O contractors and prescribe a new M&O specific clause at section 970.5209–70. Specifically, section 970.0905 would be revised to streamline content to more concisely articulate policy, and to reflect the addition of an M&O specific contract clause rather than the clause at section 952.209–72. Additionally, section 970.0906 would be added to prescribe the new M&O specific clause at section 970.5209–70.
- Section 970.1100–1: DOE proposes to amend this section to more concisely state DOE policy. Accordingly, paragraphs (a) and (b) are streamlined and combined into paragraph (a). Paragraph (c) is redesignated as new paragraph (b). Paragraph (d) is removed, as its content is limited to internal procedures and does not need to be included in the regulation.
- Section 970.1100–2: DOE proposes to remove this section as its content is limited to internal procedures and does not need to be included in the regulation.
- Subpart 970.15: DOE's guidance (both current and proposed) in subpart 970.15 covers DOE's fee policy for its Management and Operating contracts. DOE proposes to amend its current guidance found in sections 970.1504–1–1 through 970.1504–5 by revising and reorganizing it (into sections 970.1504–1 through 970.1504–3) to simplify and state explicitly its construct, sequence for calculating, and step-by-step process for determining the total available fee for an M&O contract. DOE's proposed amendments reflect its Contracting Officers' several decades of experience with the current articulation of the policy. They have found the policy satisfactory, have demonstrated a comprehensive understanding of its details, and have reflected their understanding in implementing the policy. Nonetheless, DOE's Contracting Officers have indicated it would be efficacious, for many reasons (training new procurement analysts, communicating with other offices, such as program, reviewing, and legal offices, etc.) if DOE's policy:
  - were reorganized and restated in a more straightforward, more ''plain English'' format;
  - was pruned of what has become unnecessary guidance for a number of reasons (for example, guidance covered adequately in the FAR, or DOE's internal guidance, such as DOE Acquisition Guide chapters),
  - reflected Contracting Offers' current practices in executing the policy;
  - included a detailed example of a fee calculation; and
  - conformed more tightly to the FAR's articulation of fee policy, fee constructs, fee definitions, and fee terms, to the extent appropriate.

  The proposed amendments provide a clearer articulation of the policy. DOE has: (1) deleted or revised entire sections and large portions of sections of the policy, sometimes without replacement, sometimes replacing the deleted or revised language with much more concise language; (2) reorganized the policy; and (3) added a detailed example. Often when replacing deleted or revised language with more concise language, different aspects of the topic addressed by the deleted or revised language appear more cogently stated in several sections of the proposed policy (sometimes more than once in several sections).

  In its proposed amending of its guidance, DOE retained the current fee policy for M&O contracts and clarified it. There are no changes of any significance to the current fee policy, with two exceptions. The two exceptions that DOE proposes are: eliminating the special considerations for determining fee for laboratory M&O contracts (which now appears in the current policy at section 970.1504–1–3); and raising the Classification Factor of for research and development at a laboratory (which now appears in the current policy at section 970.1504–1–9(e)(4)) from 1.25 to 1.5.

  It is worth noting that one proposed minor change to the current fee policy is the proposed suggested order of the steps in determining the maximum total available fee for a one-year period and the proposed use of the ''significant factors'' (in one of the steps) in

calculating the maximum total available fee amount for a one-year period. The proposed revisions—which reflect the current practice and DOE Contracting Officers' desire to formalize it—establish that suggested order and use. The proposed suggested order and use and the current suggested order and use both consider the fee base, fee schedules, classification factors, and significant factors, and both orders and uses produce the same result. The proposed suggested order and use require (for each type of effort) calculating an appropriate percentage derived from considering the significant factors (and applying it to the product of the maximum fixed fee and the classification factor). The current fee policy's suggested order and use—implied at sections 970.1504–1–5(c) and 970.1504–1–9(c)—require (for each type of effort) determining an appropriate fixed fee amount for each of the significant factors, summing those appropriate fixed fee amounts, and multiplying that sum by the classification factor.

The proposed suggested order and process comprise considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors). This order entails using (for each type of effort) the maximum amount of fixed fee from the fee schedule, multiplying it by the classification factor, and multiplying by the appropriate percentage (derived from considering the significant factors).

The current fee policy's suggested order and process comprise considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); specific circumstances of the procurement (reflected by the determining an appropriate fee amounts for each of the significant factors and summing those amounts); and nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors). This order entails using (for each type of effort) *the fixed fee that would have been calculated for a cost-plus-fixed-fee contract action* (using the fee schedules and considering the significant factors) and multiplying that fixed fee by the classification factor.

A second proposed minor change to the current fee policy is deleting cost reduction incentives, which are discussed in the current policy at 970.1504–1–4(f), 970.1504–5(c), and 970.5215–4. DOE no longer uses cost reduction incentives, using instead value engineering, which is covered in the DOE Acquisition Guide and the FAR.

Finally, a third proposed minor change to the current fee policy is adding (regarding conditional payment of fee, profit, and other incentives) contract performance requirements relating to business and financial systems to the performance requirements M&O contractors are subject to. Current fee policy (970.1504–1–2(i)) includes only performance requirements relating to: environment, safety, and health; and safeguarding of Restricted Data and other classified information.

A detailed breakdown of the changes to subpart 970.15 is provided below.

- Section 970.1504–1–1: DOE proposes to amend this section for clarity.
- Section 970.1504–1–2: DOE proposes to amend this section to reorganize and clarify the agency's fee policy for M&O contracts. Additionally, in some cases, DOE proposes to revise and move its coverage from other sections to this section. In other cases, DOE proposes to revise its coverage in this section and move it to other sections. In its proposed amendments to this section, among other things, the current numbering of 970.1504–1–2(a) through (h) is proposed to become 970.1504–1–2(a) through (b).

○ Paragraph (a)(1): DOE proposes adding this paragraph to clarify its policy on fee for M&O contracts. DOE's policy on types of contracts and fee arrangements suitable to M&O contracts that was originally located at 48 CFR 970.1504–1–4(a)(1) and 970.1504–1–2(h) is revised for clarity and moved to this paragraph.

○ Paragraph (a)(2): DOE proposes to add this paragraph to reorganize and clarify DOE M&O contract fee policy to: (1) move the policy requiring that a cost-plus-fixed-fee contract only be used if approved in advance by the Senior Procurement Executive (SPE) or designee from current 48 CFR 970.1504–1–4(b) to this paragraph; and (2) add a mention of the limitation on the fee for a cost-plus-fixed-fee contract found at 48 CFR 15.404–4(c)(4)(i), which makes unnecessary the last sentence of current 970.1504–1–2(d), which is deleted.

○ Paragraph (a)(3): DOE proposes to add this paragraph to reorganize and clarify DOE policy on the approval of base fee in a cost-plus-award-fee M&O contract. DOE proposes revising and moving the policy requiring that a base fee amount may only be used if approved in advance by the SPE or designee from 48 CFR 970.1504–1–4(c)(3) to this paragraph.

○ Paragraph (a)(4): DOE proposes to add this paragraph to reorganize and clarify DOE policy that incentive fees allocated to evaluation periods under cost-reimbursement type contracts should, to the greatest extent appropriate, be tied to a specific portion of the maximum total available fee. DOE proposes to revise and move the policy described herein from 48 CFR 970.1504–1–2(b) to this paragraph.

○ Paragraph (a)(5): DOE proposes to add this paragraph to reorganize and clarify DOE policy that: (1) the maximum total available fee amount may not exceed the fee derived from this section unless approved in advance by the SPE or designee; and (2) a request to allow a higher fee must be in writing and must clearly explain why the situation merits consideration. DOE proposes to revise and move the policy described herein from, in part, both 48 CFR 970.1504–1–2(d) and 970.1504–1–10 to this paragraph.

○ Paragraph (a)(5)(i): DOE proposes to add this paragraph to reorganize and clarify DOE policy that typically, only a situation where either unusually difficult objective performance incentives would be used or where successful performance would provide extraordinary value would merit consideration for allowing a higher fee. DOE proposes to revise and move the policy described herein from 48 CFR 970.1504–1–10 to this paragraph.

○ Paragraph (a)(5)(ii): DOE proposes to add this paragraph to reorganize and clarify DOE policy that when a contract requires a contractor to use its own facilities, equipment, or other resources for contract performance (*e.g.,* when there is no letter-of-credit financing), consideration may be given, subject to approval by the SPE or designee, to allowing a maximum total available fee amount above the amount calculated by this section. DOE proposes to revise and move the policy described herein from 48 CFR 970.1504–1–2(g) to this paragraph.

○ Paragraph (a)(6): DOE proposes to add this paragraph to reorganize and clarify DOE policy that each M&O contract must set forth in the contract (or in a Performance Evaluation and Measurement Plan (PEMP) or similar document) the methods that will be used to rate the contractor's performance and to determine the fee the contractor's performance will earn. The DOE Contracting Officer must ensure all important areas of contract

performance are specified in the contract or in a PEMP (or similar document), even if such areas are not assigned a specific portion of the maximum total available fee the contractor might earn. DOE proposes to revise and move the policy described herein from 48 CFR 970.1504–1–9(h) and (j), in part, to this paragraph.

○ Paragraph (a)(6)(i): DOE proposes to add this paragraph to reorganize and clarify that an M&O contract is an ''incentive contract'' as that term is used in 48 CFR part 16, subpart 16.4, and that subpart 16.4 prohibits the use in a contract of other than cost incentives without also providing a cost incentive (or constraint). DOE proposes to add this paragraph to better align with the cost-plus-award-fee contract policy in subpart 16.4, particularly 48 CFR 16.401(e).

○ Paragraph (a)(6)(ii): DOE proposes to add this paragraph to clarify: (1) award fee not earned during the award fee cycle shall not be carried over to any future award fee cycle; (2) when the award fee cycle consists of one evaluation period, unearned award fee amounts may not be carried over from one evaluation period to the next; and (3) when the award fee cycle consists of two or more evaluation periods the Contracting Officer may make the decision that unearned award fee amounts may be carried over from one evaluation period to the next, if the periods are within the same award fee cycle. DOE proposes to add this paragraph to better align its cost-plus-award-fee contract policy with the cost-plus-award-fee contract policy in 48 CFR 16.401(e)(4).

○ Paragraphs (b)(1) and (2): DOE proposes to reorganize, revise, and move the policy at 970.1504–1–2(f) to this section to clarify: (1) that before issuing a competitive solicitation, the Head of the Contracting Activity (HCA) must coordinate the maximum total available fee amount with the SPE or designee; (2) a competitive solicitation must identify the greatest maximum total available fee amount the Government will accept and may invite offerors to propose a lower fee amount; and (3) before beginning to negotiate an extension to an existing contract, the HCA must coordinate the greatest maximum total available fee amount the HCA will accept and the maximum total available fee amount targeted for negotiation with the SPE or designee.

• Section 970.1504–1–3: First, DOE proposes to delete the policy describing special considerations for determining fee for laboratory M&O contracts in current 970.1504–1–3(a) through (c)(7). That policy required determining whether any fee is appropriate for laboratory M&O contracts; DOE's new policy is that a fee is appropriate. DOE believes, based upon its experience with the current policy, the new policy will encourage a larger potential group of entities to compete for DOE's laboratory M&O contracts, which will result in better outcomes for DOE. (This deletion of the laboratory M&O contracts fee policy is one of the two proposed changes of any significance to the current M&O contracts fee policy mention earlier, the other being the Classification Factor for research and development at a laboratory was increased.)

Second, a better articulation of DOE's general policy for fee determination for M&O contracts is now proposed to be found at 970.1504–1–3(a) through (f). DOE's general policy for fee determination has been and remains that: all M&O contracts are ''incentive fee'' contracts as described in 48 CFR part 16, subpart 16.4; and DOE will evaluate (per a contract's performance measures) the contractor's performance to determine the fee the contractor's performance has earned it. This is a long-standing policy, which, in essence, is strewn across several sections of the current fee policy, not necessary in ideal sequential order, or covered by the Federal Acquisition Regulation and not reiterated in the DEAR. Stated in more detail, the long-standing construct of fee policy for M&O contracts has been and is proposed to remain:

Objective performance measures are preferred to subjective ones and tying specific fee to specific outcomes should be accomplished whenever feasible. Consequently, fixed-price actions would be ideal (albeit the unlikelihood of their being feasible in M&O contracts) and cost-plus-fixed-fee actions (such as base fee in a cost-plus-award-fee action) are to be avoided whenever practical (and their use requires high level approval). The formula to determine the maximum total available fee is based on annual fee determinations using fees bases, fee schedules, classification factors, and appropriate percentages. More specifically, the maximum total available fee amount for an M&O contract is the sum of the maximum total available fee amounts of the contract's one-year periods. The maximum total available fee amount in a one-year period is based on the fee base of the one-year period. Calculating the maximum total available fee amount for a one-year period requires considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors).

This better articulation of DOE's general policy for fee determination for M&O contracts reflects the construct of (and some pertinent details of) DOE's long-standing general policy for fee determination in more concise terms, in a more logical sequence, and in more congruence with the Federal Acquisition Regulation's articulation of the concept of contract types and fee arrangements. In essence, DOE is proposing pulling and revising (sometimes integrating constructs, sometimes integrating and revising specific language, sometimes deleting unnecessary language, sometimes revising necessary language) policy guidance from the following sections and placing it in section 970.1504–1–3:

○ 970.1504–7(a) through (e)—Fee base;

○ 970.1504–1–6(a) and (b)—Calculating fixed fee;

○ 970.1504–1–9(a) through (j)—Special considerations: Cost-plus-award-fee;

○ 970.1504–1–5—General considerations and techniques for determining fixed fees;

○ 970.1504–1–2(i)—which addresses conditional payment of fee, profit, and other incentives;

○ 970.1504–1–4(e)—which addresses requirements if using multiple contract types;

○ 970.1504–1–4(f)—which addresses cost reduction incentives; this section is deleted without replacement because DOE determined its policy for value engineering (stated in its Acquisition Guide) was more appropriate;

○ 970.1504–1–4(g)—which addresses the responsibilities of operations and field offices in establishing contract types and fee arrangements;

○ 970.1504–1–2(c) and (d)—which discuss annual fee determination, maximum amount of annual fee, and the role of the Senior Procurement Executive;

○ 970.1504–1–2(b)(3)—which discusses preferences for fixed price awards, objective measures, and tying fee to specific portions of the fee pool;

○ 970.1504–1–4(c)(3) and (4)—which discuss risk, base fee, performance fee and its two components, and the preference for the objective fee component; and

○ 970.1504–1–4(d)—which addresses performance fee, measures and objectives, the preference for tying fee to

outcomes, and the allocation of fee to outcomes.

(It should be noted that some of the pulled and revised language listed above appears more than once, that is, it appears not only in 970.1504–1–3(a) through (f) but also—for the purpose of improving readability—in other sections of DOE's proposed fee policy.)

○ Paragraphs (a) through (b)(6): DOE proposes to reorganize, revise, and move the policy currently located at 970.1504–7(a) through (e)—Fee base, 970.1504–1–6(a) and (b)—Calculating fixed fee, 970.1504–1–9(a) through (j)—Special considerations: Cost-plus-award-fee, and 970.1504–1–5—General considerations and techniques for determining fixed fees to section 970.1504–1–3(a) through (b)(6) to clarify the construct of DOE's long-standing general policy for fee determination for M&O contracts. The guidance in the portions of general policy moved to 970.1504–1–3 includes guidance regarding: magnitude of the effort; type of the effort; nature, difficulty, complexity, and importance of the work; specific circumstances of the procurement; maximum total available fee amount for the contract; annual fee bases; allocation of the maximum total available fee amount; the fee base in each of the one-year periods of the contract; allocating that total available fee to the evaluation periods of the contract based upon what best motivates the contractor's superior performance; allocating incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive; maximum total available fee amount equaling the sum of the maximum total available fee amounts in the contract's one-year periods; the maximum total available fee amount for a one-year period is based on the fee base for that one-year period; the fee base is an estimate of the allowable costs (with some exclusions) for that one-year period; the fee base is a basic component of the fee schedules, which link the fee base to fee; the amount of the fee base and the amount of fee in the fee schedules are annual amounts; calculating the maximum total available fee amount for a one-year period is based on the contract's one-year periods and their fee bases; usually the maximum total available fee amount for a one-year period is allocated to the same one-year period; when a maximum total available fee amount is established for longer than a year, it is subject to adjustment; the SPE's or designee's approval is required for evaluation periods other than one year; the Government's objective is to allocate incentives in a manner that will provide the contractor with the greatest incentive for efficient and economical performance; and occasions could occur where it would be appropriate to allocate the maximum total available fee amount for a year to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

○ Paragraph (b)(7): To clarify the construct of DOE's long-standing general policy for fee determination for M&O contracts, DOE proposes to: (1) reorganize and revise the policy currently located at 970.1504–1–2(b)(3), (c), and (d), 970.1504–1–4(c)(2) through (d), and 970.1504–1–9(b) and (h) and move it to paragraph (b)(7); (2) repeat some of the M&O contract Total Available Fee contract clause's language and add it to this paragraph, specifically the clause's language requiring the negotiations to establish the requirements for the year and the maximum total available fee that the contractor can earn for its performance must occur before the contract year begins, and the language requiring the maximum total available fee allocated to an evaluation period be apportioned among a base fee amount and a performance fee amount; and (3) rephase some of the Federal Acquisition Regulation's discussion at 48 CFR part 16, subpart 16.4, regarding incentives, objective performance requirements, and subjective performance requirements, and award fee and add it to this paragraph.

○ Paragraph (b)(8): DOE proposes to reorganize, revise, and move the policy at currently located at 970.1504–1–2(b)(3) and (e) to this paragraph.

○ Paragraph (c): DOE proposes to add this paragraph because it repeats and emphasizes the fee determining sequence mentioned earlier. Paragraph (a) addressed the general requirements for determining fee, and paragraph (b) addressed the maximum total fee amount for the contract, which necessarily mentioned total available fee for each one-year period of the contract. Therefore, it adds to the readability of DOE's M&O contract fee policy to address determining the maximum total available fee for each one-year period of the contract at this point. (The next paragraph addresses conditional payment of fee, profit, and other incentives, which applies to paragraphs (a), (b), and (c).) Paragraph (c) alludes to base fee, fee schedules, classification factors, appropriate percentages derived from the significant factors, and the specific details for calculating the maximum total available fee one-year period and an example, subjects addressed comprehensively at 970.1504–1–5, 970.1504–1–6, 970.1504–1–7, 970.1504–1–8, and 970.1504–1–4, respectively.

○ Paragraph (d): DOE proposes to reorganize and revise the policy currently located at 970.1504–1–2(i) and move it to paragraph (d). DOE is taking this action to: (1) clarify the significance to the fee determining process of the performance requirements of the contract relating to environment, safety, and health (ES&H) and relating to safeguarding of Restricted Data and other classified information; and (2) add new performance requirements, those relating to business and financial systems, which also will be significant to the fee determining process. DOE proposes to add the new performance requirements because it believes adding emphasis to the importance of strong business and financial systems to its fee policy will enhance the effectiveness of its contract administration and its mission accomplishment.

○ Paragraph (e): DOE proposes to reorganize and revise the policy on multiple contract types and fee arrangements at 970.1504–1–4(e) and move it to paragraph (e). DOE proposes to remove the policy on cost reduction incentives at 970.1504–1–4(f) and the associated clause at 970.5215–4, which is prescribed at 970.1504–5(c). DOE no longer uses the types of cost reduction incentives at 970.1504–1–4(f), using instead value engineering, which is covered in the DOE Acquisition Guide and the Federal Acquisition Regulation.

○ Paragraph (f): DOE proposes to reorganize and revise the policy at 970.1504–1–4(g) and move it to paragraph (f).

• Section 970.1504–1–4: DOE proposes to reorganize and revise this section to simplify and state explicitly the construct underlying, the sequence for calculating, and the step-by-step process for determining the total available fee for an M&O contract and include a numerical example for determining the total available fee for a one-year period of an M&O contract. While this section articulates the gist of the current fee policy, there is neither an exact parallel to this section in the current fee policy nor a direct link to specific language in the current fee policy. This section is based in large part on the current fee policy's sections on fee base, fee schedules, classification factors, and significant factors, which are found at 970.1504–1–7, 970.1504–1–6, 970.1504–1–9, 970.1504–1–5, respectively.

• Section 970.1504–1–5: DOE proposes to revise and reorganize the section to clarify DOE's policy on the calculation of fee base, which is the

estimate of necessary allowable costs, with some exclusions. DOE's policy on fee base is moved here from 48 CFR 970.1504–1–7. In addition, the section was revised to align with the proposed revised section 48 CFR 970.1504–1–4.

• Section 970.1504–1–6: DOE proposes to revise and reorganize the section to clarify DOE policy on the calculation of the M&O maximum total available fee amount, for a one-year period once the total fee base for the year is determined, including the use of the DOE M&O fee schedules (970.1504–1–6), which list the maximum amount of fixed fee. The DOE fee schedules that are based on three types of efforts (Production, research and development (R&D), environmental management (EM)). The section was revised to align with the proposed revised section 48 CFR 970.1504–1–4. In addition, DOE proposes to revise the section to better align the section with DOE policy that that an M&O contract is an ''incentive contract'' unless otherwise approved by the SPE.

• Section 970.1504–1–7: DOE proposes to revise and reorganize the section to clarify DOE policy on application of the DOE facility classification factors in the calculation of the maximum total available fee, to increase the Classification Factor for research and development conducted at a laboratory from 1.25 to 1.5, to add a Classification Factor (of 1) for efforts performed using a fixed fee, and to relocate the policy on application of facility classification factors from current 48 CFR 970.1504–1–9 to this section. In addition, DOE proposes revising the section to align with the revisions to 48 CFR 970.1504–1–4. DOE proposes to increase the Classification Factor for research and development conducted at a laboratory because of the increased importance DOE places on such efforts. DOE proposes to add the Classification Factor for efforts performed using a fixed fee because, despite the rare use of fixed fee, use of a fixed fee is permitted by DOE's fee policy.

• Section 970.1504–1–8: DOE proposes to revise and reorganize the section to clarify DOE policy on consideration of the specific circumstances of the procurement in the calculation of the maximum total available fee, the application of DOE significant factors for each type of effort, and to relocate the DOE policy on the consideration of significant factors from current 48 CFR 970.1504–1–5 to this section.

• Section 970.1504–1–9: DOE proposes to revise the section to clarify the sequence for calculating, and the step-by-step process for determining, the maximum total available fee for an M&O contract. In addition, DOE proposes to revise the section to align with revisions to section 48 CFR 970.1504–1–4.

• Section 970.1504–1–10: DOE proposes to revise the section to reorganize and clarify the policy for calculating the maximum total available fee for an M&O contract, the policy for the length of evaluation periods, the policy for allocating the maximum total available fee amount for a one-year period, and the policy for the use of evaluation periods greater than one year. DOE proposes to relocate the policy on the length of evaluation periods and the use of evaluation periods greater than one year from current 48 CFR 970.1504–1–2(c) and (d) to this section.

• Section 970.1504–1–11: DOE proposes to revise the section, which is simply a repetition of the last step in calculating the maximum total available fee for a contract. This section is aligned with the revisions in section 48 CFR 970.1504–1–4.

• Section 970.1504–2–1: DOE proposes to amend this section to maintain its current guidance on cost or pricing data (relocated from current 970.1504–3–1). DOE also proposes to delete its current guidance: on the documentation of the fee prenegotiation objective (970.1504–1–11); and on the price negotiation (970.1504–2). The language in the deleted sections is unnecessary either because it is primarily procurement guidance adequately covered elsewhere (among other places, at 48 CFR 15.406–1 and 15.406–3 and internal DOE guidance) or primary funding guidance that should be addressed in the Office of Chief Financial Officer's guidance.

• Section 970.1504–3: DOE proposes to move the policy currently located at 48 CFR 970.1504–5 to this section. DOE's proposed revisions to the text of 970.1504–5 include:

○ deleting references to the Total Available Fee clause's Alternates I through IV, currently found at 48 CFR 970.1504–5(a)(1) through (4) because elsewhere DOE is proposing revising the Total Available Fee clause and eliminating its Alternates I through IV;

○ deleting the prescription for the Cost Reduction clause (currently found at 970.1504–5(c)) because DOE no longer uses cost reductions incentives (DOE is also proposing eliminating the policy and clause for cost reductions incentives, found at 970.1504–1–4(f) and 970.5215–4, respectively, because DOE uses value engineering instead of cost reduction incentives);

○ deleting the references to the clause at 970.5215–3's Alternates I and II, found at 48 CFR 970.1504–5(b)(2) and (3) because elsewhere DOE is proposing revising the clause to eliminate the need for the Alternates; and

○ revising for clarity DOE's policy on using the Limitation on Fee solicitation provision (found at 970.5215–5).

• Section 970.1706–1: DOE proposes to amend this section to clarify the DOE policy on the award, renewal, and extension of M&O contracts.

○ Paragraph (a): DOE proposes to amend this paragraph to clarify the DOE policy that: (1) effective performance under an M&O contract is facilitated by the use of a relatively long contract term; (2) only the Secretary can authorize the use of an M&O contract; and (3) only the Secretary can renew the original authorization of an M&O contract.

○ Paragraph (a)(1): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that an M&O contract shall provide for a base term not to exceed the lessor of five years or the maximum term the Secretary authorized.

○ Paragraph (a)(2): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that: (1) the contract may include option terms provided no option term exceeds the lessor of five years or the maximum term the Secretary authorized; (2) the sum of base term and the option terms does not exceed the lessor of 10 years or the maximum term the Secretary authorized for the contract; (3) in addition to the base term and the option terms just described, an M&O contract for a national laboratory that is competitively awarded may provide for award term incentives provided none exceed the maximum term the Secretary authorized for each; and (4) the sum of base term, option terms, and award terms shall not exceed the lessor of 20 years or the maximum term the Secretary authorized for the contract.

○ Paragraph (a)(3): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that after the Secretary's original authorization of the use of the M&O contract has expired, any continuation of work under an M&O contract must be preceded by the Secretary's renewal of the authorization for use of an M&O contract.

○ Paragraph (a)(4): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that a sole source extension of an M&O contract to the incumbent must be justified under one of the statutory authorities listed in 48 CFR 6.302 and authorized by the Secretary.

○ Paragraph (a)(5): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that the specific duration of the base term, option terms, and award terms of an M&O contract must be established concurrent with the Secretary's authorization (or renewal of his/her authorization) to use an M&O contract (for original use, sole source award to a new contractor, competitive award to a new contractor or to the incumbent, or sole source extension of the contract to the incumbent).

○ Paragraph (b): DOE proposes to amend this paragraph to clarify the DOE policy that the contracting officer's decision to exercise an option must be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s), and that in deciding to exercise the option, the contracting officer shall make the determinations required by 48 CFR 17.605.

○ Paragraph (b)(1): DOE proposes to add this paragraph to clarify DOE policy that for the exercise of an M&O option period, the contracting officer shall consider the extent to which performance-based management contract provisions are present or can be negotiated into the contract.

○ Paragraph (b)(2): DOE proposes to add this paragraph to reorganize content and clarify DOE policy that for the exercise of an M&O option period, the contracting officer shall make the determinations required by 48 CFR 17.605 in the manner described therein. The content formerly located at paragraph (b) is moved here and provides that as part of the review required by 48 CFR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option; the incumbent contractor's past performance under the contract; the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract; and the impact of a change in a contractor on the Department's discharge of its programs. The contracting office shall address the considerations in 48 CFR 17.605 in the decision that the exercise of the option is in the Government's best interest. The proposed paragraph adds that the determination described in 48 CFR 17.207(d) and (e)(2) is not required, and because of the way in which the evaluation of cost to the Government is performed in the award of an M&O contract that includes options, the contracting officer need only determine the option was evaluated as part of the initial competition and contains a maximum fee. The contracting officer need not, for example: issue a new solicitation; informally analyze prices; or determine the option is the more advantageous offer.

• Sections 970.1707–1, 970.1707–3, and 970.1707–4: DOE proposes to amend these sections to make minor editorial changes to update references and update policy to reflect the Department of Energy Research and Innovation Act (Pub. L. 115–246). In addition to referencing the Economy Act (31 U.S.C. 1535), 42 U.S.C. 7259a has been added as the authority for the Secretary to allow work to be performed at DOE laboratories ''on behalf of other departments and agencies of the Government, agencies of State and local governments, and private persons and entities''.

• Sections 970.1708, 970.1708–1, 970.1708–2, and 970.1708–3: DOE proposes to add these sections to integrate a new DOE policy on Agreements for Commercializing Technology (ACT) and prescribe a new clause at 48 CFR 970.5217–2. DOE proposes to add new regulatory coverage that provides authorization for M&O contractors to conduct third party-sponsored research at the M&O contractor's risk under Agreements for Commercializing Technology. Whereas the requirements and policy for Agreements for Commercializing Technology are currently contained in DOE guidance and in special provisions included in contracts, the proposed rule will establish regulatory coverage and incorporate the requirements into a new clause at 48 CFR 970.5217–2. DOE proposes the new policy and clause to allow M&O contractors to engage with industry more flexibly on research and technology transfer projects. Through ACT, an M&O contractor can negotiate and accept financial and performance risks and accept terms and conditions more consistent with industry practice that are not permitted under Cooperative Research and Development Agreements and SPP agreements to advance technology transfer and the commercialization of technologies.

• Section 970.1907–8: DOE proposes to add this subsection to clarify that Contracting Officers should insert the clause at 48 CFR 5219–9, Small Business Subcontracting Plan, in all M&O solicitations and contracts and to prescribe a new clause that supplements the FAR clause at 48 CFR 970.5219, ''Small Business Subcontracting Plan''. The new clause incorporates a DOE policy concerning ''Management and Operating Contractor Subcontract Reporting Capability (MOSRC)'' to collect key information about M&O contractor first tier subcontracts for reporting to the Small Business Administration.

• Section 970.2201–1–1: DOE proposes to amend this section to identify situations with non-management and operating contracts where the applicability of management and operating contractor basic labor policies may apply.

• Section 970.2201–1–2: DOE proposes to amend this section in several places to identify the basis for the policies presented by adding a citation to the underlying regulations. The amendments also include minor textual edits for clarity, including applicability to certain non-M&O contracts as described in section 970.2201–1–1 and limit the scope of this section to wages, salaries, and employee benefits under the collective bargaining agreement process. The proposed rule also transfers more general matters from this section to section 970.2201–1–4.

• Section 970.2201–1–3: DOE proposes to amend this section to add language to expand the applicability of section 970.5222–1, Collective Bargaining Agreements-Management and Operating Contracts to certain non-M&O contracts (as described in section 970.2201–1–1) and require that it be flowed down to subcontracts for protective services or other services performed at a DOE-owned site that affect continuity of operations.

• Section 970.2201–1–4: DOE proposes to add this section to incorporate policy on critically skilled employees initially established in DOE Acquisition Letter 94–19 and to emphasize the connection to a contractor's compensation system and policies in the recruitment and retention of a critically skilled workforce. This section also emphasizes that costs in support of this policy must be reasonable and meet allowability requirements. Lastly, the discussion of wages, salaries, and employee benefits removed from section 970.2201–1–2 is relocated to this section.

• Sections 970.2204, 970–2204–1, and 970–2204–1–1: DOE proposes to amend section 970.2204 to clarify that both non-management and operating contracts and management and operating contracts are subject to the same subpart (922.4) governing labor standards involving construction. Accordingly, the reader is pointed to the policy in subpart 922.4, and section 970.2204–1 is removed as duplicative. Section 970.2204–1–1 is relocated to subpart 922.4 as well.

• Section 970.2210: DOE proposes to revise this section to update the reference to the Service Contract Act of 1965. The section heading is revised to

read ''Service contract labor standards'' and the section text updates the reference to read ''The Service Contract Labor Standards, historically referred to as the Service Contract Act of 1965''.

• Section 970.2270: DOE proposes to revise this section regarding unemployment compensation to better comport with existing federal and state unemployment compensation laws and eliminate inconsistencies.

• Section 970.2270–2: DOE proposes to add this prescription to ensure contracting officers include the clause at 970.5222–4, Unemployment Compensation, in applicable solicitations and contracts and that fill-in data are also identified by the contracting officer.

• Section 970.2301–1: DOE proposes to remove this section as its contents include an out-of-date hyperlink, reference to the requirements of a rescinded Executive order, and internal procedures that are not necessary to set forth in regulation.

• Section 970.2301–2: DOE proposes to revise this section to: (1) add a prescription for the inclusion of the clause at 952.223–78, ''Sustainable Acquisition Program''; (2) remove prescriptions for clauses that are proposed for removal (970.5223–6, which is removed because the Executive order that is its basis has been revoked and 970.5223–7 which duplicates the clause at 952.223–78); and (3) remove prescriptions for various FAR clauses as they are already prescribed in 48 CFR chapter 1 and it is unnecessary to prescribe them here.

• Section 970.2303–2–70: DOE proposes to revise this section to update the office name in paragraph (c)(2)(ii).

• Section 970.2672–3 is amended to clarify the applicability of 48 CFR 952.226–74 ''Workforce Restructuring and Displaced Employee Hiring Preference'' to both non-management and operating contracts and management and operating contracts pursuant to section 3161 of the National Defense Authorization Act For Fiscal Year 1993.

• Section 970.2673–2: DOE proposes to revise this subsection to change the prescription for the clause at 970.5226–3, ''Community Commitment'', making it optional rather than mandatory.

• Section 970.2701–1: DOE proposes to revise this section to clarify that subpart 970.27 applies to contracts for decontamination and decommissioning activities.

• Sections 970.2702 and 970.2702–1–2: DOE proposes several amendments to sections 970.2702 through 970.2702–6. Specifically, DOE proposes to: (1) revise the heading to section 970.2702 and section numbering to conform to the FAR subpart 27.2 which this subpart supplements; and (2) consolidate clause prescriptions formerly located in sections 970.2702–2 through 970.2702–6 into new section 970.2702–1–2.

• Section 970.2703–1: DOE proposes to revise this section to streamline content by removing paragraph (b)(1) through (5) as its content is adequately addressed elsewhere, and redesignating paragraph (c) as paragraph (b).

• Section 970.2703–2: DOE proposes to revise this section to address more clearly when each of the patent clauses should be used based on the type of Contractor and patent waivers granted. In addition, paragraph (a)(2) addresses ''privately funded technology transfer'' activities that are authorized under Alternate I of 48 CFR 970.5227–3. Although there is no specific language prescribed by an Alternate in this clause, the instructions allow further changes to the patent clause if DOE or the Contractor requests to further define use of royalty funds, cost restrictions and liability related to privately funded licensing activities. Since DOE has replaced a DEAR clause for subcontracts to non-profit organization or small business firms with the FAR provision at 37 CFR 401.14, a new paragraph (h) is added to address the use of appropriate Alternates I or II for 48 CFR 952.227–11 to add agency implementing regulations and, if applicable, DOE's Declaration of Exceptional Circumstance for substantial U.S. manufacture.

• Section 970.2704–2: DOE proposes to revise this section to: (1) add a sentence at the end of paragraph (a) that, in compliance with Government-wide mandates to make research results publicly available, references section 935.010 for R&D results conveyed in scientific and technical information and DOE Order 241.1B which addresses requirements for scientific and technical information that are stored in the Office of Scientific and Technical Information (OSTI); and (2) revise the last sentence of paragraph (e) to reflect the new standard of not requiring the Contractor to renew copyright exclusivity every five years, which was administratively burdensome and hampered long-term licensing activity, but to notify Patent Counsel and OSTI when commercial activity ceases.

• Section 970.2704–3: DOE proposes to revise this subsection to add more clarity as to when to use either of the Rights in Data clauses in M&O Contracts.

• Section 970.2770–2: DOE proposes to revise this subsection to reflect the addition of the new clause at section 970.5217–2, Agreements for Commercializing Technology (ACT), and require its inclusion in new awards for or extensions of existing DOE laboratory or weapon production facility M&O contracts. By authorizing the use of ACT, the Contractor may engage with third parties with more flexibility in terms, but the Contractor accepts greater risks in advance funding and liability.

• Section 970.2803–1: DOE proposes to revise this section by updating the office name in paragraph (b)(1). Additionally, in paragraph (b)(3), DOE proposes to establish the Head of Contracting Activity as the official responsible for approving management and operating contractor employees' benefit plans because that individual is better situated to make these determinations.

• Section 970.2803–2: DOE proposes to revise this section to update the reference in the last sentence from ''(f)(3)(C)'' to ''(f)(1)(iii)(C)''.

• Section 970.3101–00–71: DOE proposes to add this section to clarify that the cost principles of 48 CFR 31.2 and subpart 970.31 apply to M&O contracts, regardless of entity type.

• Section 970.3102–3–70: DOE proposes to revise this section to remove the parenthetical reference in paragraph (a)(3)(i) because DOE's fee policy no longer distinguishes between a contract for the management and operation of a laboratory and a contract for the management and operation of a non-laboratory.

• Section 970.3102–05–6: DOE proposes to amend this section by removing the last sentence of paragraph (a)(6) which states ''For purposes of designating the threshold, total compensation includes only the employee's salary and cash bonus or incentive compensation.'' Removing this sentence increases DOE flexibility in this area to account for other things which should be included in the definition of total compensation, such as deferred compensation. In addition, DOE proposes to remove paragraph (p)(1) which references the Office of Federal Procurement Policy senior executive compensation benchmark because that information is covered in the FAR. The proposed rule also adds a pointer to that coverage at the end of paragraph (a)(7)(ii).

• Section 970.3200–1: DOE proposes to revise this subsection, in paragraph (c), by removing the words ''remedy coordination official'' and adding in their place ''Head of the Contracting Activity''. This change is intended to improve clarity since ''remedy coordination official'' is an undefined term that is not widely used whereas

''Head of the Contracting Activity'' is universally used and understood in the acquisition community.

• Section 970.3270: DOE proposes to amend this section by removing section 970.5203–1, ''Management Controls,'' from the list of standard financial management clauses at paragraph (a)(4) and redesignating paragraphs (a)(5) through (8) as paragraphs (a)(4) through (7). The management controls clause is prescribed elsewhere and does not need to be prescribed here as well.

• Section 970.3501–1: DOE proposes to amend this section to remove an obsolete reference.

• Section 970.3501–2: DOE proposes to amend this section to update references and clarify that only a federal Contracting Officer can obligate the Government to place work on the contract and obligate the Government to reimburse the contractor under the contract.

• Section 970.4102–1: DOE proposes to revise this section to update office names, remove references to a rescinded DOE Order, clarify that Federal Energy Management Program (FEMP) concurrence is not necessary for NNSA programs, and make minor editorial changes.

• Section 970.4207–05–01: DOE proposes to revise this section, in paragraph (b)(4)(ii) to add the words ''if such costs have been the subject of a DOE audit'' to the end of the sentence. This change is proposed in order to clarify that the contracting officer cannot resolve any questioned costs that have been the subject of a DOE audit without first obtaining the opinion of the DOE's auditor on the allowability of such costs.

• Section 970.4401–1: DOE proposes to amend this section to remove Balanced Scorecard metrics as a means of evaluating purchasing systems and allow for other metrics to be used. This change is proposed because the Balanced Scorecard program does not include metrics for evaluating M&O contractor purchasing systems.

• Section 970.4402–1: DOE proposes to revise this section to add a new paragraph (c) which states that the M&O contractor's purchasing performance, including compliance with its approved system and methods, will be evaluated against the performance criteria and measures set forth in 48 CFR part 44, subpart 44.3, using the procedures articulated in DOE policies including DOE guidance on oversight of M&O Contractor's Purchasing Systems.

• Section 970.4501–1: DOE proposes to amend this section by revising the section heading to read ''Applicability'' and replacing the existing section text (moved to new section 970.4501–2) with language that clarifies the applicability of this subpart to M&O contractors and on-site environmental management and other major prime contractors as designated by the SPE. A reference to 41 CFR chapter 109 is also added.

• Section 970.4501–2: DOE proposes to add this section with text taken from the former section 970.4501–1. Paragraph (a) is modified by adding ''and environmental management, and other major prime contractors located at DOE sites'' to the end of the first sentence; removing the second sentence; and updating the reference to managerial personnel in the third sentence from ''paragraph (j)'' to ''paragraph (k)''.

• Section 970.5203–1: DOE proposes to amend the ''Management Controls'' clause, in the introductory text, by removing the words ''and 970.3270(a)(4)'' before the words ''insert the following clause:''. It is only necessary to prescribe this clause in one location, and the second prescription located at section 970.3270(a)(4) was therefore removed (as described above).

• Section 970.5204–1: DOE proposes to remove the ''Counterintelligence'' clause from part 970 and relocate it to section 952.204–74, as this requirement pertains to both M&O and non-M&O contractors.

• Section 970.5204–3: DOE proposes to revise the ''Access to and Ownership of Records'' clause to incorporate a class deviation. Paragraph (b) is revised to delete the parenthetical instruction to Contracting Officers in the second sentence as well as the last sentence of paragraph (b)(1), which lists examples of employee-related systems of record. Paragraph (g) is revised to replace the automatic flow down requirement based on the presence of the ''Integration of environment, safety, and health into work planning and execution'' clause currently at section 970.5223–1 with language that requires the contractor to flow down the clause (or maintain the applicable records themselves) whenever the subcontract scope of work could result in potential exposure to radioactive or other toxic substances that can cause long term health impacts.

• Section 970.5209–70: DOE proposes to add a new M&O-specific ''Conflicts of Interest'' clause in order to provide uniform requirements for M&O contractors.

• Section 970.5215–1: DOE proposes to revise the ''Total available Fee: Base Fee Amount and Performance Fee Amount'' to make minor editorial revisions throughout to improve clarity.

• Section 970.5215–3: DOE proposes to revise the ''Conditional Payment of Fee, Profit, and other Incentives—Facility Management Contracts'', to: add a new requirement that the contractor must comply with its contract's business and financial systems requirements; update references; make revisions for clarity; remove Alternate I (it addressed contracts without security requirements; its requirements are now combined with the basic clause); and remove Alternate II (it addressed contracts awarded on a cost plus award fee basis; it is no longer necessary).

• Section 970.5215–4: DOE proposes to remove the ''Cost Reduction'' clause. Because the Department has a value engineering policy for M&O contracts, a cost reduction clause is not necessary.

• Section 970.5215–5: DOE proposes to revise the ''Limitation on Fee'' clause by updating the reference for the clause prescription in the introductory text and making minor editorial changes for clarity in paragraph (b).

• Section 970.5217–1: DOE proposes to revise the ''Strategic Partnership Projects Program (Non-DOE Funded Work)'' clause to incorporate the Research and Innovation Act and Master Statement of Work requirements, which reduce the transactional approvals by DOE for previously-approved groups of projects. In paragraph (d)(3), DOE has modified its requirements for requiring intellectual property indemnity to allow the contractor to reserve the provision when the sponsor is a federally-funded entity (DOE accepting liability to promote Government funded research) or a state or local government or public university, which may be prohibited from indemnifying others by state law.

• Section 970.5217–2: DOE proposes to add this new ''Agreements for Commercializing Technology'' clause in order to integrate a new DOE policy that was developed to allow M&O contractors to engage with industry more flexibly on research and technology transfer projects. Through ACT, an M&O contractor can negotiate and accept financial and performance risks and accept terms and conditions more consistent with industry practice that are not permitted under Cooperative Research and Development Agreements and SPP agreements. Whereas the requirements and policy for Agreements for Commercializing Technology are currently contained in DOE guidance and in special provisions included in contracts, the proposed rule will establish regulatory coverage and incorporate the requirements into this new clause.

• Section 970.5219: DOE proposes to add this new ''Small Business Subcontracting Plan'' clause, in order to integrate a new DOE policy concerning

the ''Management and Operating Contractor Subcontract Reporting Capability (MOSRC)'', a DOE system, and associated processes to collect key information about M&O contractor first tier subcontracts for reporting to the Small Business Administration.

• Section 970.5222–4: DOE proposes to add this new ''Unemployment Compensation'' clause to address situations where a contractor, under federal and state unemployment rules are permitted to opt out of paying the state unemployment insurance tax and permitted to instead reimburse the state for actual claims paid out to its former employees. This section requires notification to the Government of its election and asserts governments right to review such changes to assess budgetary and programmatic risks when opting out.

• Section 970.5223–6: DOE proposes to remove the ''Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management'' clause because Executive Order 13423 has been rescinded.

• Section 970.5223–7: DOE proposes to remove the ''Sustainable Acquisition Program'' clause on the basis that it duplicates the clause at section 952.223–78, which is prescribed in section 923.172.

• Section 952.5226–1: DOE proposes to revise the ''Diversity Plan'' clause to incorporate the more current terminology of ''Diversity, Equity, Inclusion, and Accessibility'' (DEIA) and make minor editorial revisions. This update will better align the DOE clause with current Administration initiatives and will clarify the broader scope of recent DEIA initiatives.

• Section 970.5227–1: DOE proposes to revise the ''Rights in Data-Facilities'' clause to add new definitions of Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, and Patent Counsel for clarity. The revisions also add a new paragraph (b)(4) requiring the Contractor to deposit technical data at the Office of Scientific and Technical Information per the DOE Order 241.1. Paragraph (c)(3) is added to allow the Government to instruct the Contractor to assert copyright in technical data or software and transfer title to the Government for licensing and distribution if necessary. Paragraph (d) is modified to allow Patent Counsel to determine what Alternates are appropriate to data rights clauses in subcontracts. In order to allow for competitive solicitations, Alternate II is added to include a provision in the Limited Rights Notice to allow for the use of contractor's proprietary data in solicitations for government facilities being constructed, modified or decontaminated and decommissioned.

• Section 970.5227–2: DOE proposes to revise the ''Rights in Data-Technology Transfer'' clause to add several new definitions of Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Open Source Software, and Patent Counsel for clarity. Paragraph (b) was broadened to allow the lab to assert copyright from just articles to ''works'' such as drawings, chapters in books, workshop documents, datasets, etc. that are released to the public. This allows control of the content when the public uses or references this copyright work, but still satisfies DOE's duty to disseminate the results of its research. Also, Office of Scientific and Technical Information requirements are updated in this section to comply with DOE Order 241.1. Added paragraph (c)(3) allows the government to direct the Contractor to assert copyright and transfer title to the Government for further control and distribution of technical data and software. As part of the broadening of copyright assertion without DOE Patent Counsel approval, paragraph (d) expands the type of data that the Contractor can protect for control without commercializing and adds a shorter notice to the publisher if necessary. Since paragraph (d) expanded the type of data, paragraph (e) is revised to require DOE Patent Counsel approval when the Contractor needs to control distribution to advance the goals of the technology transfer mission through commercialization. When the Contractor is granted permission to assert copyright, the five-year renewal periods have been changed to a period of commercialization activities since software can be useful for decades and licensees are reluctant to commercialize for only five years if DOE Patent Counsel rejected any extensions of time. The government may distribute copies to the public of the copyrighted work after the period of commercialization has ended. Paragraph (f) is added to address copyright assertion and distribution in open source software (OSS). The Contractor must notify the funding program that the Contractor intends to distribute the software as OSS and the program has two weeks to object. DOE Patent Counsel can supply that approval if a funding program doesn't exist. This section also provides the requirements that the Contractor to retain records, distribute OSS such as the type of OSS licenses used and allow the public free access to software. Paragraph (g), Subcontracting, has been revised to allow DOE Patent Counsel to approve the use of 48 CFR 52.227–14, Rights in Data-General, or 48 CFR 52.227–17, Rights in Data-Special Works. The definitions in section 927.409(a) have been removed to use Alternate I of 48 CFR 52.227–14. The paragraph (d)(3) in 927.409 has been replaced with Alternate VIII of 48 CFR 952.227–14 to allow DOE Patent Counsel to approve copyright requests. Similarly, Alternate I of 48 CFR 952.227–17 permits DOE Patent Counsel to direct a subcontractor to assert copyright in technical data and transfer to the Government or a third party such as the Contractor. This will allow the Laboratory to consolidate copyright title if portions are generated by subcontractors. Alternate II of this clause is added to include a provision for Limited Rights Data in the Notice for government facilities being constructed, modified or decontaminated and decommissioned.

• Section 970.5227–3: DOE proposes to revise the ''Technology Transfer Mission'' clause to address the M&O Contractor's use of Trademark and Service marks with regards to the Laboratory names and facilities. In paragraph (a), statutory updates are included to comply with the Laboratory Modernization and Technology Transfer Act. Paragraph (b) includes, for clarity, new definitions for Bailment, Assignment, Strategic Partnership Projects (SPP), Agreements for Commercializing Technology (ACT), Master Scope of Work, and Joint Work Statement. Paragraph (d), Conflicts of Interest—Technology Transfer, has been modified in paragraph (d)(8) to include more information when the Contractor requests for approval of some exclusive licenses or assignments of technology to third parties. In addition, paragraph (d)(10) is revised to better define when the DOE is to be notified of potential conflicts when evaluating proposals on behalf of the program. In paragraph (f), U.S. Industrial Competitiveness, DOE has exercised its discretion to require M&O contractors to obtain written information from the U.S. Trade Representative (USTR) to assist in the consideration by the M&O contractor and the DOE Contracting Officer of a prospective foreign partner's home country's treatment of U.S. companies' intellectual property, and whether U.S. companies have opportunities to do collaborative research in the home country. After many years of experience, DOE has determined that a less cumbersome procedure, which involves relying on information available from USTR websites, can be utilized for

obtaining the relevant information. A new paragraph (f)(4) is added to address the Exceptional Circumstance Determination for U.S. Competitiveness (substantial U.S. manufacturing) when licensing Contractor technology. Paragraph (g) was amended to exclude CRADA (Cooperative Research and Development Agreements) and SPP requirements for product liability indemnity because it is covered under guidance for those agreements. Paragraph (l) was amended to allow the annual technology transfer plan to be included in the Annual Laboratory Plan. Paragraph (n)(3)(iii) was added to require the CRADA Final Report required in DOE Order 483.1 to be submitted to OSTI. Paragraph (n)(5) conflict of interest was changed from ''preparation, negotiation, or approval'' to ''negotiation, approval or performance'' of CRADAs since preparing the agreements would include support staff with no control over the content and performance is added to capture the principal investigator's role. When requirements for providing a Technology Partnership Ombudsman was added to the Contract, it was accidently added to Alternate I. To correct this error, paragraph (p) was added to move the Technology Partnership Ombudsman from Alternate I into the contract clause. Alternate I was revised to remove the ombudsman provision.

- Section 970.5227–4: DOE proposes to revise the ''Authorization and Consent'' clause in paragraphs (c)(1) through (3) to replace $100,000 with ''simplified acquisition threshold'' so that when the simplified acquisition threshold limit is increased, this clause does not have to update the dollar value.
- Section 970.5227–5: DOE proposes to revise the ''Notice and Assistance Regarding Patent and Copyright Infringement'' clause, in paragraph (c) to replace $100,000 with ''simplified acquisition threshold'' so that when the simplified acquisition threshold limit is increased, this clause does not have to update the dollar value.
- Sections 970.5227–10 and 970.5227–12: DOE proposes to revise the clauses at section 970.5227–10, ''Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor,'' and section 970.5227–12, ''Patent Rights-Management and Operating Contracts, For-Profit Contractor,'' in order to reflect statutory changes and addition of approved determinations of exceptional circumstance (DEC). Paragraph (a) of both clauses adds definitions of Initial Patent Application and Statutory Period for clarity. Paragraph (b)(3) of the clause at section 970.5227–10 (previously located at paragraph (b)(2)) and paragraph (b)(6) of the clause at section 970.5227–12 (previously located at paragraph (b)(5)) have been modified to clarify when the Contractor may elect title to inventions that are covered under a DEC. Paragraph (c) of both clauses has been revised to allow electronic reporting using the Government's iEdison or similar system along with certain information such as award numbers. Both clauses have changed the requirement for ''publication approval'' to ''publication review'' requiring the Contractor Invention Identification Procedures to address notification to DOE instead of approval. In paragraph (g) of both clauses, the reference to 48 CFR 925.227–11 has been replaced with 37 CFR401.14 because 48 CFR 952.227–11 has been revised with Alternates I and II for agency implementation of the DEC. In paragraph (j), March-in Rights, both clauses were modified to remove the four reasons where DOE can exercise this right by referencing the statute (for nonprofit organization or small business firm contractors) or patent waiver (for For-Profit Contractors.) Both clauses have added paragraph (t), U.S. Competitiveness, in compliance with the Determination of Exceptional Circumstance for Domestic Manufacture of DOE Science and Energy Technologies. Lastly, both clauses added a final paragraph on Unauthorized Access to require the Contractor to adequately protect materials related to inventions and notify DOE of a breach.
- Section 970.5227–11: DOE proposes to revise the ''Patent Rights-Management and Operating Contracts, For-profit Contractor Non-Technology Transfer'' clause in a few ways. First, DOE proposes to change the clause title to remove ''Non-Technology Transfer'' and add ''No Patent Waiver'' in its place. Second the proposed rule adds a definition of Department of Energy to paragraph (a) for clarity. Additional changes are made to reflect statutory changes. Furthermore, paragraph (c)(2)(vii) requires not only the B&R code but related information such as funding announcements or SPP/CRADA numbers to make it easier to identify inventions from other sources and paragraph (c)(5) is modified to include reporting inventions to Government electronic reporting systems instead of the contracting officer or patent counsel. Finally, DOE proposes to add an ''Unauthorized Access'' paragraph (o) to require the Contractor to adequately protect materials related to inventions and notify DOE of a breach.
- Section 970.5232–2: DOE proposes to revise the ''Payments and Advances'' clause to: (1) re-organize and re-number the paragraphs; (2) make editorial changes to streamline and simplify content to improve clarity and update references; and (3) add a paragraph concerning ''provisional fee,'' which DOE has never addressed in the DEAR, to Alternate II. Although DOE has issued internal guidance that defines provisional fee, articulates when it might be useful, and specifies how to use it, neither the FAR nor the DEAR define or addresses it. Consequently, DOE has concluded it would be prudent to heighten awareness of DOE's view of provisional fee by including some discussion of it in DEAR.
- Section 970.5232–3: DOE proposes to revise the ''Accounts, Records, and Inspection'' clause to clarify (in paragraph (c)) the contractor's responsibility to either perform a sufficient amount of audit work of its subcontractors' incurred costs or arrange for an audit of its subcontractors' incurred costs. Minor editorial changes for clarity are also proposed.
- Section 970.5232–5: DOE proposes to revise the ''Liability with Respect to Cost Accounting Standards'' clause, in the introductory text, by updating the citation for the clause prescription.
- Section 970.5232–6: DOE proposes to revise the ''Strategic Partnership Project Funding Authorization'' clause, in the introductory text, by updating the citation for the clause prescription.
- Section 970.5232–7: DOE proposes to revise the ''Financial Management System'' clause to: (1) reorganize and number the paragraphs; (2) clarify that contractors must maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal Entities as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies; and (3) make minor editorial changes for clarity.
- Section 970.5235–1: DOE proposes to revise the ''Federally Funded Research and Development Center Sponsoring Agreement'' clause to make minor editorial revisions and to clarify that only the Contracting Officer can place work on the contract and obligate the Government to reimburse the Contractor for the work.
- Section 970.5244–1: DOE proposes to revise the ''Contractor Purchasing System'' clause to: (1) clarify the

Contactor's obligations regarding: maintaining documentation; providing audit or a sufficient amount of audit work; and for which subcontracts the Contractor must provide audit or a sufficient amount of audit work; (2) change the approval level for subcontractor indemnification requests from the SPE to the HCA in consultation with local legal counsel in paragraph (l) in order to give flexibility for local level approval of routine, low risk indemnity; (3) add seven clauses to the list of required subcontract flowdown requirements in paragraph (x); and (4) update references and make minor editorial changes for clarity.

- Section 970.5245–1: DOE proposes to revise the ''Property'' clause to add references to 41 CFR chapters 102 and 109 and make minor editorial changes for clarity.

III. Public Participation

DOE will accept comments, data, and information regarding this NOPR on or before the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email or postal mail. Comments and documents submitted via email or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email or postal mail two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination. It is DOE's policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

IV. Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the Office of Information and Regulatory Affairs (OIRA) for review. This proposed rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this proposed rule was reviewed under that Executive order by OIRA of the Office of Management and Budget (OMB).

Consistent with Executive Orders 12866, 13563 and 14094, DOE issues this proposed rule only on a reasoned determination that the benefits of the rule justify its costs, and, in choosing among alternative regulatory approaches, DOE has selected those approaches that maximize net benefits. DOE proposes a broad but largely procedural revision of its acquisition regulation to update and streamline the policies, procedures, provisions, and clauses that are currently applicable to its contracts.

The proposed rule seeks to update, clarify, or eliminate coverage that is unclear, obsolete, or unnecessarily duplicates the FAR; incorporate class deviations into the coverage; streamline the coverage's policies and procedures where appropriate (taking into account DOE's and its contractors' actual experiences); and add several new minor clauses in order to standardize local clause language throughout the department by eliminating the multiple versions of local clauses in current use. While the proposed rule does include several minor policy revisions, none of the revisions are substantial and in total they will have negligible impact on DOE's operations, its contractors, or the economy. The revisions do not in any specific case, or in total, substantially change the existing DEAR or how DOE and DOE contractors adhere to the DEAR. Most of these proposed changes would not generate any additional costs.

Nonetheless, DOE would like to highlight several changes to the DEAR that raise potential cost burden concerns and discuss the expected impacts of these changes.

First, the proposed rule includes a revision of the Facility Clearance clause and associated policy coverage to incorporate a pre-award Interim Access procedure and allow for final Facility Clearance post-award. This change should not result in any significant costs and is intended to benefit the Government by leveraging interim access authorizations for key contractor personnel and improving efficiencies in the timeliness of contract awards, and in contract management.

Additionally, DOE proposes to revise the M&O fee policy to simplify the explanation of fee calculations, delete outdated requirements, and raise the classification factor for R&D laboratory from 1.25 to 1.5. These changes should not result in any significant costs. Most of the changes are editorial in nature, and are internal procedures directed to DOE contracting officers who will benefit from the simplified explanation of fee calculations. The change in classification factor will not result in any significant cost increase since DOE expects no change to the total available fees under these contracts. The revisions are intended to reduce the administrative burden associated with routine requests to the SPE to exceed the total available fees calculated using the existing classification factor.

Furthermore, DOE proposes to add several new contract clauses. Four of these (Agreements for Commercializing Technology; Small Business Subcontracting Plan; Conditional Payment of Fee, Profit, and Other Incentives; Identification of Contractor Employees) are substantially similar to clauses already widely used in DOE contracts. As a result, these four changes would not result in any added burden or costs but would benefit the Department and its contractors by standardizing these clauses across contracts.

The entirely new clauses are:

- A clause to address situations where a M&O contractor is permitted under federal and state unemployment rules to opt out of paying the state unemployment insurance tax and instead reimburse the state for actual claims paid out to its former employees. The proposed clause requires notification to the government of the contractor's election and asserts the government's right to review such changes to assess budgetary and programmatic risks when opting out. This clause only applies to M&O contracts and the notification required poses no significant burden or cost.
- A clause to address conflicts of interest, tailored to M&O contracts. The current DEAR requires M&O contracts to contain an organizational conflict of interest clause substantially similar to the clause at section 952.209–72. The proposed clause tailors that existing clause specifically for M&O contracts in an attempt to provide uniform requirements. The clause only applies to M&O contracts and poses no significant additional burden or cost, but the consistency across M&O contracts will benefit the Government in contract award and administration.
- A clause to clarify the policy and procedures for integrating DOE Directives into non-M&O contracts. Contractor requirements documents (CRDs), attached to DOE Directives, have been integrated into non-M&O contracts as needed for a long time. The addition of the proposed clause, along with the general information section and clause prescription is simply intended to codify the existing process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis and imposes no additional burden or cost.

Finally, many of the proposed changes would result in benefits to the public. Because the DEAR has not had a comprehensive update in decades, it contains outdated and unused content. Additionally, it has citations to outdated laws and regulations and contains sections that are duplicative of the FAR or that are more appropriate for internal procedures and policies. The proposed changes would streamline the DEAR, make it easier to read, and would reflect current practice and requirements.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The DEAR governs all DOE acquisitions which obligate appropriated funds. Using data from its Integrated Data Warehouse, DOE estimates that it currently has approximately 3,200 prime contractors whose contracts are governed in part by the DEAR and that approximately 2,000 of those contractors are small entities under the RFA. Therefore, DOE has reason to believe that the proposed rule, which is a comprehensive update of the DEAR, could affect a substantial number of small entities.

However, DOE expects that the proposed rule would not have a significant economic impact on those small entities. In fact, DOE expects that the overall impacts of the proposed rule would benefit small entities because the proposed changes would, among other things, revise or remove outdated information and citations, remove extraneous procedural information that applies only to DOE's internal procedures, and remove policy or procedures duplicative of FAR requirements.

Moreover, proposed changes that are not merely technical or procedural primarily apply to DOE's twenty-three M&O contracts. An M&O contract is an agreement by which a private sector entity operates a DOE facility, such as a national laboratory. None of DOE's M&O contracts are held by small entities, and therefore changes to those contracts do not directly impact small entities.

Furthermore, even if M&O contractors could be considered small entities under the RFA, the proposed changes that would only impact M&O contracts are not economically significant.

- DOE's proposed changes to the M&O fee policy sections would simplify and state explicitly the methodology Contracting Officers are to utilize for determining the total available fee for an M&O contract. The revisions are primarily intended to reduce the administrative burden for Contracting Officers. For instance, DOE's proposed rule clarifies that the maximum total available fee amount for an M&O contract may not exceed the fee derived from calculations included in the policy unless approved in advance by the SPE or designee. Additionally, the proposed rule includes an increase in the classification factor for R&D laboratory from 1.25 to 1.5. This change would impact 16 M&O contractors who currently operate national laboratories (all of which are managed and operated by large entities) but should not have a significant economic impact because DOE does not anticipate an increase in the total available fees approved for these contracts.
- DOE proposes to add a clause at section 970.5222–4 to address situations where a M&O contractor is permitted under Federal and state unemployment rules to opt out of paying the state unemployment insurance tax and instead reimburse the state for actual claims paid out to its former employees. The proposed clause requires notification to the government of the contractor's election and asserts the government's right to review such changes to assess budgetary and programmatic risks when opting out. DOE does not believe that the notification would result in any economic impact.
- DOE also proposes to add a clause at section 970.5209–70 to address conflicts of interest, tailored to M&O contracts. The current DEAR requires M&O contracts to contain an organizational conflict of interest clause substantially similar to the clause at section 952.209–72. The proposed clause tailors that existing clause specifically for M&O contracts in an attempt to provide uniform requirements and poses no significant additional burden or cost. Therefore, DOE does not believe that the new clause will impose a significant economic impact.
- DOE proposes to add two clauses specific to M&O contractors: Agreements for Commercializing Technology at section 970.5217–2 and Small Business Subcontracting Plan at section 970.1907–8. These clauses are substantially similar to clauses already widely used in DOE contracts, and would therefore not have a significant economic impact.

Finally, the remaining substantive revisions in the proposed rule that are applicable to non-M&O contracts would not have a significant economic impact.

- The proposed rule includes a revision of the Facility Clearance provision at section 952.204–73, which is required in all solicitations for which the contract work is anticipated to require access to classified information or special nuclear material. The current provision requires a full Facility Clearance prior to the award of a contract requiring access to classified information, and prior to granting any Interim Access Authorizations to key management personnel. The proposed revision would provide a process that permits contract award prior to granting a full Facility Clearance, and permit contract award prior to granting Interim Access Authorizations to key management personnel. There is no change to the processes themselves, only to the timing of the processes.
- DOE proposes to add a clause to clarify the policy and procedures for integrating DOE Directives into non-M&O contracts. Contractor requirements documents (CRDs), attached to DOE Directives, have been integrated into non-M&O contracts as needed for a long time. The addition of the proposed clause, along with the general information section and clause prescription is simply intended to codify the existing process of integrating the requirements of DOE Directives into non-M&O contracts on a bilateral basis and imposes no additional burden or cost to the contractors.
- The proposed rule includes two new clauses: Conditional Payment of Fee, Profit, and Other Incentives at section 952.242–71 and Identification of Contractor Employees at section 952.203–1. These clauses are substantially similar to clauses already widely used in DOE contracts, and would therefore not have a significant economic impact.

Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) Existing information collections imposed by the Department of Energy Acquisition Regulation are covered by OMB Control Number 1910–4100.

D. Review Under the National Environmental Policy Act of 1969

DOE analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that the proposed rule fits within the following categorical exclusion listed in appendix A to subpart D of part 1021: A6 (Procedural rulemakings, including rulemaking under 48 CFR chapter 9 establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services). Therefore, this proposed rule does not require the preparation of either an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has determined that this proposed rule does not limit the policymaking discretion of the States. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions* under ''Guidance & Opinions'' (Rulemaking)). DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*.

DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule, which revises and updates DOE's acquisition regulation, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

48 CFR Parts 901, 902, 909, 912, 915, 916, 926, and 951

Government procurement.

48 CFR Part 903

Antitrust, Conflict of interest, Government procurement.

48 CFR Part 904

Classified information, Government procurement.

48 CFR Part 908

Government procurement, Motor vehicles, Printing, Utilities.

48 CFR Part 917

Government procurement, Reporting and recordkeeping requirements, Research.

48 CFR Part 919

Government procurement, Minority businesses, Small businesses, Women.

48 CFR Part 922

Equal employment opportunity, Government procurement, Labor, Reporting and recordkeeping requirements.

48 CFR Part 923

Drug abuse, Government procurement, Radiation protection.

48 CFR Part 925

Foreign trade, Government procurement.

48 CFR Part 927

Copyright, Government procurement, Inventions and patents.

48 CFR Part 931

Accounting, Government procurement.

48 CFR Part 932

Accounting, Government procurement, Loan programs—energy, Loan programs—National defense.

48 CFR Part 933

Administrative procedure and practice, Government procurement.

48 CFR Part 935

Government procurement, Research.

48 CFR Parts 936 and 952

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 941

Government procurement, Utilities.

48 CFR Part 942

Accounting, Government procurement.

48 CFR Part 945

Government procurement, Government property.

48 CFR Part 970

Accounting, Classified information, Drug abuse, Government procurement, Insurance, Labor, Minority businesses, Reporting and recordkeeping requirements, Small businesses, Surety bonds, Taxes, Whistleblowing, Women.

Signing Authority

This document of the Department of Energy was signed on August 2, 2023, by William J. Quigley, Deputy Associate Administrator, Partnership and Acquisition Services, National Nuclear Security Administration, pursuant to delegated authority from the Administrator, National Nuclear Security Administration, and John R. Bashista, Director, Office of Acquisition Management, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 2, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to amend chapter 9 of title 48 of the Code of Federal Regulations as set forth below:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 7101 *et. seq.* and 50 U.S.C. 2401 *et seq.*

■ 2. Section 901.103 is revised to read as follows:

§ 901.103 Authority.

The DEAR and amendments thereto are issued by the Senior Procurement Executives (SPEs) of the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). The SPEs may also approve deviations from the DEAR, together and individually. The DOE SPE delegation is pursuant to a delegation from the Secretary of Energy in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and other applicable laws. The NNSA SPE delegation is pursuant to a delegation from the Administrator of the NNSA, in accordance with section 3212 of the National Nuclear Security Administration Act (50 U.S.C. 2402), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and other applicable laws. Except for the authorities designated as non-delegable, the SPEs are delegated the authorities assigned to the Agency Head in the FAR. A reference to the SPE refers to the DOE SPE and the NNSA SPE, unless otherwise indicated.

§ 901.301.70 [Redesignated as 901.301–70]

■ 3. Section 901.301.70 is redesignated as section 901.301–70.

■ 4. Newly redesignated section 901.301–70 is revised to read as follows:

§ 901.301–70 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulation (41 CFR chapter 101), the Federal Management Regulation (41 CFR chapter 102), the DOE Property Management Regulation (41 CFR chapter 109), and DOE Directives. The Department also maintains the DOE Acquisition Guide (''the Guide''), which has procedural guidance for the acquisition community. The DOE Acquisition Guide serves this purpose by identifying relevant internal standard operating procedures to be followed by both procurement and program personnel who are involved in various aspects of the acquisition process. The Guide also is intended to be a repository of best practices found throughout the agency that reflect specific illustrations of techniques which might be helpful to all readers. The Guide is at *https://www.energy.gov/management/articles/department-energy-acquisition-guide.*

■ 5. Subpart 901.4 is added to read as follows:

Subpart 901.4—Deviations from the DEAR

Sec.

Subpart 901.4—Deviations from the DEAR

§ 901.401 Definition.

A deviation from the DEAR is defined as the issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the DEAR.

§ 901.403 Individual deviations.

Requests for individual deviations from the FAR or the DEAR shall be submitted to the cognizant Senior Procurement Executive (SPE), that is DOE or NNSA, (or designee) for approval. Requests shall cite the specific part of the FAR or DEAR from which it is desired to deviate, shall set forth the nature of the proposed deviation(s), and shall give the reasons for the action requested.

§ 901.404 Class deviations.

Requests for class deviations from the FAR or the DEAR shall be submitted to the cognizant SPE, that is DOE or NNSA, (or designee) for processing in accordance with FAR 1.404 and this section. Requests shall include the same information prescribed in 901.403 for individual deviations.

■ 6. Amend section 901.602–3 by revising paragraph (b)(3) to read as follows:

§ 901.602–3 Ratification of unauthorized commitments.

(b) * * *

(3) The ratification authority of the DOE and NNSA Senior Procurement Executives in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of $250,000 or under. The ratification authority of the HCA is nondelegable.

§ 901.603–1 [Amended]

■ 7. Amend section 901.603–1 by removing the text ''DOE Order 361.1B'' and adding in its place ''DOE Order 361.1''.

§ 901.603–70 [Amended]

■ 8. Amend section 901.603–70 by removing the text ''DOE Order 541.1B'' and adding in its place ''DOE Order 541.1''.

PART 902—DEFINITIONS OF WORDS AND TERMS

■ 9. The authority citation for part 902 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 10. Amend section 902.101 by revising the definition of ''Senior Procurement Executive'' to read as follows:

§ 902.101 Definitions.

* * * * *

Senior Procurement Executive means for the Department of Energy, the Director, Office of Acquisition Management and for the National Nuclear Security Administration, the Deputy Associate Administrator for the Office of Partnership and Acquisition Services.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 11. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 12. Section 903.104–7 is revised to read as follows:

§ 903.104–7 Violations or possible violations.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of FAR 3.104–7(a)(1) and (2), relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act, shall be the individual who has procurement authority and is one supervisory level above the Contracting Officer. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; the General Counsel for National Nuclear Security Administration (NNSA), and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in FAR 3.104–7(a)(1) and (2) regarding questions of disclosure of proprietary or source selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding FAR 3.104–7(a)(1) and (2) for Headquarters activities, or for any other office that does not have authority through procurement operations, is the Agency Ethics Official (Designated Agency Ethics Official).

■ 13. Section 903.1003 is added to read as follows:

§ 903.1003 Requirements.

In accordance with FAR subpart 7.5, DOE does not contract for inherently governmental functions. However, DOE may contract for services that can require contractors to perform duties that require regular contact with DOE and the public related to DOE's mission. To ensure that all parties know the status of individuals as contractor personnel, contractors and their employees must properly identify themselves as contractors in all DOE internal and external communications and meetings.

■ 14. Section 903.1004 is revised to read as follows:

§ 903.1004 Contract clauses.

(a) The Contracting Officer shall insert the DOE website address *https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf* in paragraph (b)(3)(ii) of the clause at FAR 52.203–14, Display of Hotline Poster(s).

(b) The Contracting Officer shall insert the clause at 952.203–1, Identification of Contractor Employees, in all solicitations and contracts for services over the micro-purchase threshold.

PART 904—ADMINISTRATIVE MATTERS

■ 15. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 16. Amend section 904.401 by:

■ a. Revising the definition of ''Access authorization'';

■ b. Removing the definition of ''Classified information'' and adding the definition ''Classified information or Classified National Security Information'' in its place; and

■ c. Adding in alphabetical order a definition for ''Counterintelligence''.

The revision and additions read as follows:

§ 904.401 Definitions.

Access authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material under the Atomic Energy Act of 1954; Executive Order 12968, Access to Classified Information, dated August 2, 1995; or 10 CFR part 710.

* * * * *

Classified information or *Classified National Security Information* mean information officially determined to be Restricted Data, Formerly Restricted Data, or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, as amended, or information determined to require protection under Executive Order 13526, Classified National Security Information, dated December 29, 2009.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel,

physical, document or communication security programs.

* * * * *

■ 17. Section 904.402 is revised to read as follows:

§ 904.402 General.

(b) The basis of Department of Energy's (DOE) industrial security requirements is the Atomic Energy Act of 1954, as amended, the DOE Organization Act of 1977, as amended, and Executive Orders 13526 and 12829.

(3) DOE has established a counterintelligence program. All DOE elements and contractors managing DOE-owned or leased facilities that require access authorizations, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(4) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

(5) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause providing for appropriate reductions in fees or amounts paid to the contractor under the contract in the event of violations of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause specifies various degrees of violations and the amount of reduction attributable to each degree. The clause at 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives, shall be used to comply with 42 U.S.C. 2282b (unless the clause at 970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts is used). See 942.71(d) for the clause's prescription.

(e) Part 927 contains policies and procedures for safeguarding classified information in patent applications and patents.

■ 18. Amend section 904.404 by revising paragraphs (d)(1), (3), (6), and (7) to read as follows:

§ 904.404 Solicitation provision and contract clause.

(d) * * *

(1) *Security, 952.204–2.* This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. This includes contracts awarded under simplified acquisition procedures, as well as National Security Program contracts, under which access to proscribed information is required. Although DOE utilizes the National Industrial Security Program, DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204–2 rather than the clause at FAR 52.204–2 and Contracting Officers must incorporate DOE Form 470.1 or equivalent.

* * * * *

(3) *Sensitive foreign nation controls, 952.204–71.* This clause is required in unclassified research contracts which may involve sharing unclassified information about nuclear technology with certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3, Unclassified Foreign Visits and Assignments Program, or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

* * * * *

(6) *Computer Security, 952.204–77.* This clause is required in contracts in which the contractor may have access to computers owned, leased or operated on behalf of the Department of Energy.

(7) *Counterintelligence.* The Contracting Officer shall include the clause at 952.204–74, Counterintelligence, in all contracts that include the clauses at 952.204–2, Security Requirements, and 952.204- 70, Classification/Declassification.

■ 19. Amend section 904.7004 by revising the first sentence of paragraph (a) to read as follows:

§ 904.7004 Findings, determination, and contract award or termination.

(a) Based on the information disclosed by the offeror(s) or contractor, and after consulting with the DOE Office of Environment, Health, Safety and Security, the contracting officer must determine that award of a contract to an offeror(s) or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. * * *

* * * * *

■ 20. Amend section 904.7102 by revising paragraph (e) to read as follows:

§ 904.7102 Waiver by the Secretary.

* * * * *

(e) Any request for a waiver under this subpart shall be accompanied by the information required by the clause at 952.204–73, Facility Clearance.

■ 21. Subpart 904.74 is added to read as follows:

Subpart 904.74—Department of Energy Directives

Sec.
904.7400 General.
904.7401 Contract clause.

§ 904.7400 General.

The contractor is required to comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted by the appropriate authority. Additionally, the Department of Energy (DOE) Directives Program is a system of instructions, including orders, notices, manuals, guides, and standards, for DOE elements. In certain circumstances, DOE will apply requirements contained in these directives to a contract. In these circumstances, program and requirements personnel will be responsible for identifying the requirements that are applicable to the contract and for providing a list of applicable requirements to the Contracting Officer for inclusion in the contract.

§ 904.7401 Contract clause.

The Contracting Officer shall insert the clause at 952.204–78, DOE Directives, in non-management and operating contracts where the work will be performed on a DOE site and the contract will be subject to the requirements of DOE Directives. This includes information technology or cybersecurity work, as well as other work program officials identify as requiring the clause.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 22. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

§ 908.7103 and 908.7115 through 908.7117 [Removed and Reserved]

■ 23. Sections 908.7103 and 908.7115 through 908.7117 are removed and reserved.

PART 909—CONTRACTOR QUALIFICATIONS

■ 24. The authority citation for part 909 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 25. Amend section 909.403 by revising the definition of ''Debarring and suspending official'' to read as follows:

§ 909.403 Definitions.

* * * * *

Debarring and suspending official, for the DOE, the designees are:

(1) *Debarring Official* means the Debarring Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The debarring Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

(2) *Suspending Official* means the Suspending Official for DOE contracts is the Director, Office of Acquisition Management, DOE, or designee. The suspending Official for NNSA contracts is the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, or designee.

■ 26. Amend section 909.405 by revising paragraphs (f), (g), and (h) to read as follows:

§ 909.405 Effect of listing.

* * * * *

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the System for Award Management (SAM) exclusions.

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent's or representative's name has an active exclusion in SAM.

(h) DOE or NNSA shall review SAM before conducting a pre-award survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

§ 909.407–3 [Amended]

■ 27. Amend section 909.407–3 in paragraph (e)(1)(vii) by removing the text ''EPLS'' and adding in its place the text ''SAM exclusion''.

■ 28. Amend section 909.507–2 by revising paragraphs (a)(1) and (3) and (b) to read as follows:

§ 909.507–2 Contract clause.

(a)(1) The contracting officer shall insert the clause at 952.209–72, Organizational Conflicts of Interest, in each non-M&O solicitation and contract for advisory and assistance services expected to exceed the simplified acquisition threshold.

* * * * *

(3) The contracting officer shall include Alternate I with the clause at 952.209–72 in instances in which a meaningful amount of subcontracting for advisory and assistance services is expected or the contract provides for the operation of a DOE site or facility or environmental remediation of specific DOE sites.

(b) For M&O contracts, see 970.0906.

PART 912—ACQUISITION OF COMMERCIAL ITEMS

■ 29. The authority citation for part 912 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 30. Section 912.301 is added to read as follows:

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

(f) The Contracting Officer shall supplement the clauses prescribed at FAR 12.301—

(1) In all cases, with 952.232–7, Electronic Submission of Invoices/ Vouchers; and

(2) In appropriate cases, following prescriptions elsewhere in this chapter, with the following:

(i) 952.204–74, Counterintelligence.

(ii) 952.204–77, Computer Security.

(iii) 952.211–71, Priorities and allocations for energy programs (clause).

PART 915—CONTRACTING BY NEGOTIATION

■ 31. The authority citation for part 915 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 32. Section 915.404–4–70 is revised to read as follows:

§ 915.404–4–70 DOE structured profit and fee system.

(a) This section implements FAR 15.404–4(b) and (d).

(b) DOE's structured profit and fee system for non-management and operating contracts comprises two approaches: a weighted guidelines system for all but construction contracts, construction management contracts, and special equipment purchases; and a fee schedules-based system for construction contracts, construction management contracts, and special equipment purchases. The former is covered at 915.404–70–2 through 915.404–70–8; the latter is covered at 915.404–71 through 915.404–4–71–6. Both approaches use the procedures at 915.404–4–72 for cost-plus-award-fee contracts.

■ 33. Amend section 915.404–4–70–2 in the table in paragraph (d) by revising entries II, IV.b., V, and VI to read as follows:

§ 915.404–4–70–2 Weighted guidelines system.

* * * * *

(d) * * *

Profit factors	Weight ranges (percent)
* * * * * * *	
II. Contract Risk (type of contract-weights applied to total cost of items items I.a. thru I.e.)	0 to 8.
* * * * * * *	
IV. * * *	
b. Developed items employed (Weights applied to total of profit $ for items I.a. thru I.e.)	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items I.a. thru I.e.)	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items I.a. thru I.e.)	−5 to +5.
* * * * * * *	

§ 915.404–4–72 [Amended]

■ 34. Amend section 915.404–4–72 in the second sentence of paragraph (a) by removing ''970.15404–4–8'' and adding in its place ''970.1504–1–1 through 970.1504–3''.

■ 35. Section 915.408–70 is revised to read as follows:

§ 915.408–70 Key personnel clause.

The Contracting Officer shall insert the clause at 952.215–70, Key Personnel, in solicitations and contracts under which successful performance is largely dependent on the expertise of specific key personnel.

PART 916—TYPES OF CONTRACTS

■ 36. The authority citation for part 916 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 37. Section 916.307 is revised to read as follows:

§ 916.307 Contract clauses.

When using the clause at FAR 52.216–7, Allowable Cost and Payment, supplement the clause with 952.216–7, Allowable Cost and Payment.

§ 916.504 [Amended]

■ 38. Amend section 916.504 by redesignating paragraph (c) as paragraph (a)(1).

§ 916.505 [Amended]

■ 39. Amend section 916.505 by:

■ a. Redesignating paragraph (b)(6) as paragraph (b)(8); and

■ b. In newly redesignated paragraph (b)(8)(i):

■ i. Removing the words ''Office of Procurement and Assistance Management'' and adding in their place ''Office of Acquisition Management''; and

■ ii. Removing ''48 CFR 16.505(b)(6)'' and adding in its place ''FAR 16.505(b)(8)''.

PART 917—SPECIAL CONTRACTING METHODS

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

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 41. Amend section 917.600 by revising paragraph (b) to read as follows:

§ 917.600 Scope of subpart.

* * * * *

(b) The requirements of this subpart apply to any Department of Energy management and operating contract.

§ 917.601 [Removed]

■ 42. Section 917.601 is removed.

■ 43. Amend section 917.602 by revising paragraphs (b) and (c) to read as follows:

§ 917.602 Policy.

* * * * *

(b) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts.

(c) A management and operating contract may be extended at the completion of its term without providing for full and open competition only when such extension is justified under one of the statutory authorities identified in FAR 6.302 and only when authorized by the Secretary.

§ 917.7402 § [Amended]

■ 44. Amend section 917.7402 in paragraphs (b) and (c)(4) by removing ''DOE Order 430.1B'' and adding in its place ''DOE Order 430.1C''.

PART 919—SMALL BUSINESS PROGRAMS

■ 45. The authority citation for part 919 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

§ 919.7001 and 919.7002 [Removed]

■ 46. Sections 919.7001 and 919.7002 are removed.

■ 47. Section 919.7003 is revised to read as follows:

§ 919.7003 General policy.

(a) The DOE Mentor-Protege program seeks to foster long-term business relationships between DOE prime contractors and small business concerns, historically Black colleges and universities (HBCUs), and other minority institutions of higher learning, and to increase the overall number of such entities that receive DOE contract and subcontract awards.

(b) DOE contractors may enter into Mentor-Protege Agreements, aimed at providing developmental assistance to enhance capabilities, with the entities identified in paragraph (a) of this section.

(c) Costs incurred by a mentor to provide developmental assistance are allowable only to the extent incurred in performance of a contract identified in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract. Developmental assistance must not duplicate any effort normally expended in the course of awarding and administering the Mentor firm's subcontract.

(d) The DOE Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) is the Program Manager for the DOE Mentor-Protege Program.

§ 919.7004 and 919.7005 [Removed]

■ 48. Sections 919.7004 and 919.7005 are removed.

■ 49. Section 919.7006 is revised to read as follows:

§ 919.7006 Incentives for DOE contractor participation.

(a) Under cost-plus-award fee contracts, approved Mentor firms may earn award fees associated with their performance as a Mentor. The award fee plan may include provision for the evaluation of the contractor's utilization of small business concerns, HBCUs, and other minority institutions of higher learning. DOE may evaluate the Mentor's performance in the DOE Mentor-Protege Program under any Mentor-Protege Agreement(s) as a separate element of the award fee plan.

(b) Mentor firms shall receive credit towards applicable subcontracting goals for subcontracts awarded pursuant to their Mentor-Protege Agreements, as negotiated under FAR subpart 19.7.

(c) Mentor firms may be reimbursed for allowable developmental assistance costs for protege firms under the contract costs.

§ 919.7007 through 919.7013 [Removed]

■ 50. Sections 919.7007 through 919.7013 are removed.

■ 51. Section 919.7014 is revised to read as follows:

§ 919.7014 Solicitation provision.

The cognizant contracting officer shall insert the provision at 952.219–70, DOE Mentor-Protege Program, in all solicitations that include the clause at FAR 52.219–9, Small Business Subcontracting Plan.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 52. The authority citation for part 922 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 53. Section 922.101–70 is added to read as follows:

§ 922.101–70 General (applicability of Management and Operating contractor basic labor policies to certain non-Management and Operating contracts).

(a) The policies and associated contract clauses in 970.2201 apply to the award and administration of non-Management and Operating contracts if:

(1) The contract work had been previously performed under a DOE

Management and Operating contract; and/or

(2) The Contractor is required to employ all or part of the former Contractor's workforce; or

(3) The contract has been specifically designated by the Senior Procurement Executive.

(b) The non-M&O contracts described by paragraph (a) of this section may include, but are not limited to, contracts whose work is for:

(1) Environmental remediation;

(2) Decontamination and decommissioning;

(3) Environmental restoration;

(4) Infrastructure services for the site;

(5) Site closure at a current or former M&O contract site or facility; or

(6) Protective forces that provide physical security of sites at a current or former M&O contract site.

■ 54. Subpart 922.4 is added to read as follows:

Subpart 922.4—Labor Standards for Contracts Involving Construction

Sec.

§ 922.406 Administration and enforcement.

§ 922.406–1 Policy.

This section sets forth additional controls and criteria for the application of the Construction Wage Rate Requirements Statute (40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act) (Statute) in the Department of Energy's operational or maintenance activities. The policy included in this subpart applies to M&O contracts.

(c) *Categorical exemptions.* The two categories of work discussed in paragraphs (c)(1) and (2) of this section would normally be covered by the Statute. However, in limited circumstances, these types of work will be classified as non-covered by the Statute. These exceptions are to be narrowly construed and used only when clearly applicable. Any decision on the two categorical exemptions from Statute coverage shall be made by the Head of the Contracting Activity, without power of delegation.

(1) Work for which continuity of operations is mission-essential (*i.e.,* when life, property, or DOE operating requirements are confronted with material risks).

(2) Emergency work to combat the effects of fire, flood, earthquake, military or terrorist attacks, technological emergencies, infectious disease/pandemic influenza threats, equipment failure, accident, or other casualties, and to restart the operational activity following the casualty. This exemption will generally apply only to work directly related to restarting the activity or work.

(d) *Particular exemptions.* Work items meeting one of the following criteria normally will be classified as non-covered by the Statute:

(1) *Individual work items estimated to cost $2,000 or less.* The total dollar amount of a contract is not the determining factor; rather, consider the cost of individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Statute.

(2) *General operational and maintenance activities.* Service-type work that is a part of general operational and maintenance activities, including cyclic, routine, and recurring programs, or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and or repair work.

(3) *Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment.* Note: If these activities are a logical part of the construction of a facility, or where there is more than incidental construction work, relative to the overall effort involved, they are Statute covered.

(4) *Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly.* This refers to equipment, processes, and devices that are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment may be such that the professional personnel who are responsible for the test or experiment and/or data to be derived therefrom must, by necessity, participate in the assembly and interconnections. The following types of experiments are not Statute covered:

(i) *Set-up of devices and processes associated with the experiment, within established facilities, usually require utility connections.* Such set-ups are generally not covered by the Statute. (However, set-up requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute.)

(ii) *Assembly of piping and equipment, including adaptation and modification within existing hot cell facilities.* Assembly of piping and equipment, including adaptation and modification thereof, within existing hot cell facilities to prove out conceptual designs of chemical processing units or remotely controlled machining equipment.

(iii) *Assembly of materials and equipment for thermonuclear experiments.* Assembly of materials and equipment for particular aspects of thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy and to collect data thereon.

(iv) *Assembly, erection, modification, and disassembly of a loop set-up.* A loop facility differs from a loop set-up in that it is of a more permanent character. (Note that preparatory work for a loop set-up or facility requiring structural changes or modifications of basic utility services, as distinguished from connections thereto, is covered by the Statute. Similarly, material and equipment that are installed for a loop set-up that is a permanent part of the facility, or used for a succession of experimental programs are similarly covered by the Statute.)

(v) *Reactor component experiments involving the insertion of experimental components within reactor systems without the use of a loop assembly.* Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption. (Note: Although the erection and on-site assembly of such a reactor facility is covered by the Statute, the set-up of components whose characteristics are under study are excluded from Statute coverage.)

(5) *Decontamination.* Decontamination includes washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material (except asbestos); and painting or other resurfacing, provided that such painting or resurfacing is an integral part of the decontamination activity. Except to the extent section 1804 of the Atomic Energy Act of 1954 (as amended by Title XI of the Energy Policy Act of 1992), 42 U.S.C. 2297g–3, applies to the work at issue. Section 1804 requires all laborers and mechanics performing decontamination or decommissioning of

DOE uranium enrichment facilities are paid prevailing wages.

(6) *Burial of contaminated soil waste or contained liquid.* Note, however, that the initial preparatory work readying the burial ground for use (*e.g.,* any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered by the Statute. Work performed subsequent to burial that involves the placement of concrete or other like activity is also covered by the Statute.

(e) *Statute-covered experimental development work.* Notwithstanding the exceptions in paragraph (d)(4) of this section, the following experimental development work is Statute covered: building construction, structural changes, drilling, tunneling, excavation, back-filling, modifications to utility services, as distinguished from temporary connections thereto, and set-up of equipment to be used for continuous testing (*e.g.,* a machine to be continuously used for testing the tensile strength of structural members).

(f) *Different work categories may have differing Statute coverage.* For instance, a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as not Statute covered, since it may be necessary to separate work that should be classified as Statute covered. Therefore, the Contracting Officer shall establish and maintain controls for the careful scrutiny of proposed work assignments under such contracts.

(1) Contractors whose contracts do not contemplate the performance of work covered by the Statute with the contractor's employees are not authorized to perform such work within the scope of the Statute, unless the Contracting Officer, in compliance with FAR subpart 22.4, modifies the contract.

(2) Determinations of Statute applicability are the responsibility of the HCA on a case-by-case basis. However, the HCA may delegate to the Contracting Officer, if consistent with DOE's responsibilities as described in this subsection, the authority to prescribe, from time to time, classes of work as to which applicability or non-applicability of the Statute is clear.

(g) *Contracting Officer responsibilities.* The Contracting Officer shall comply with the procedures for requesting wage determinations set forth in FAR 22.404, as necessary.

(h) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes encompasses several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment that in other industries would normally be done in established commercial plants. While the manufacture of components and equipment in the manufacturing plant is not covered by the Statute, the installation of any such manufactured items on a construction job is covered by the Statute if the installation includes more than incidental construction work relative to the overall effort involved.

PART 923—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 55. The authority citation for part 923 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

§ 923.002 [Removed]

■ 56. Section 923.002 is removed.

§ 923.101 [Redesignated as 923.170]

■ 57. Section 923.101 is redesignated as section 923.170

■ 58. Newly redesignated section 923.170 is revised to read as follows:

§ 923.170 Policy.

The Department of Energy's (DOE) policy is to promote sustainable acquisition by acquiring products and services that are energy-efficient, contain recycled or biobased content, and have other environmentally preferable attributes, as specified in applicable statutory, regulatory, and Executive Order based requirements. *See* FAR 2.101 for applicable definitions. More information on environmentally preferable products and services is available from the DOE Sustainable Acquisition Program.

§ 923.102 [Redesignated as 923.171]

■ 59. Section 923.102 is redesignated as section 923.171.

§ 923.103 [Redesignated as 923.172]

■ 60. Section 923.103 is redesignated as section 923.172.

■ 61. Newly redesignated section 923.172 is revised to read as follows:

§ 923.172 Contract clauses.

Insert the clause at 952.223–78, Sustainable Acquisition Program, in all contracts under which the contractor operates Government-owned facilities or motor vehicle fleets, or significant portions thereof, or performs construction at a Government-owned facility.

§ 923.903 [Amended]

■ 62. Amend section 923.903 by removing ''52.223–XX'' and adding in its place ''52.223–19'' wherever it appears.

■ 63. Section 923.7002 is revised to read as follows:

§ 923.7002 Worker safety and health.

(a) The Atomic Energy Act mandates that DOE shall either pursue civil penalties, as implemented at 10 CFR part 851, for a violation under 42 U.S.C. 2282c, or a contract fee reduction, but not both. For a contract fee reduction—

(1) The clause prescribed at both 942.71(d) and 923.7003(f), which is 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives, addresses contract fee reductions (for both non-management and operating contracts and management and operating contracts; for the latter 942.71(d) and 923.7003(f) refer to clause prescribed in 970.1504–3(b)).

(2) The clause provides, among other things, for an appropriate reduction to the fee, profit, or other incentives under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns.

(3) When reviewing performance failures that would warrant a reduction of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause.

(4) The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity: prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.942–71, Conditional Payment of Fee, Profit, or Other Incentives; and prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(b) In the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, before deciding to pursue a contract fee reduction, the Contracting Officer must coordinate with the Office of Nuclear Safety within the Office of Enforcement in the Office of Enterprise Assessments (or designated successor office).

■ 64. Amend section 923.7003 by:

■ a. Revising paragraphs (a), (f), and (g); and

■ b. Removing paragraph (h).

The revisions read as follows:

§ 923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate personnel within the Office of Environment, Health, Safety and Security (or designated successor office). For M&O contracts see 970.2303–3 and insert the clause at 970.5223–1.

* * * * *

(f) Unless the clause for management and operating contracts is prescribed (see 970.1504–3(b)), insert the clause at 952.242–71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204–2, Security Requirements, the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, or both clauses.

(g) The contracting officer shall insert the clause at 952.223–75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223–72, Radiation Protection and Nuclear Criticality.

PART 925—FOREIGN ACQUISITION

■ 65. The authority citation for part 925 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 66. Amend section 925.1001 by revising paragraph (b) to read as follows:

§ 925.1001 Waiver of right to examination of records.

(b) *Determination and findings.* A determination and findings required by FAR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Acquisition Management, or for the National Nuclear Security Administration (NNSA), to the Deputy Associate Administrator for the Office of Partnership and Acquisition Services, for coordination of the Secretary's approval.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

■ 67. The authority citation for part 926 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 68. Amend section 926.7001 by revising paragraphs (a) and (b) to read as follows:

§ 926.7001 Policy.

(a) Section 3021(a) of the Energy Policy Act of 1992, as amended, specifies that the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for competitively awarded contracts and subcontracts under the Energy Policy Act be expended with -

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) Historically Black colleges and universities;

(3) Colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) Qualified HUBZone small business concerns, as defined at FAR 2.101.

(b) The four groups in paragraph (a) of this section are collectively referred to in this section as ''Energy Policy Act target groups.''

* * * * *

■ 69. Section 926.7004 is revised to read as follows:

§ 926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements shall be North American Industry Classification System code 541330.

■ 70. Section 926.7005 is revised to read as follows:

§ 926.7005 Preferences under the Energy Policy Act.

Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the simplified acquisition threshold shall provide for an evaluation preference for offers received from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal after consideration of all technical and cost evaluation factors, and if one of these proposals is from an offeror from among an Energy Policy Act target group that offeror will be selected for award.

■ 71. Amend section 926.7006 by revising paragraph (a) to read as follows:

§ 926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal—

(1) Any award set-aside for small disadvantaged business;

(2) Any competitive section 8(a) award;

(3) Any competitive award to one of the four target groups under an unrestricted procurement;

(4) Any award to one of the four target groups conducted under simplified acquisition procedures in excess of the micro-purchase threshold; and

(5) Any competitively awarded subcontract to one of the four target groups under a prime award.

* * * * *

■ 72. Amend section 926.7007 by revising paragraph (c) to read as follows:

§ 926.7007 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 952.226–72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $750,000 ($1,500,000 in the case of construction).

* * * * *

§ 926.7101 [Amended]

■ 73. Amend section 926.7101 by removing ''Section'', wherever it appears, and ''42 U.S.C. 7474h(c)(2)'' and adding in their places ''section'' and ''50 U.S.C. 2704(c)(2)'', respectively.

§ 926.7103 [Amended]

■ 74. Amend section 926.7103 in paragraph (a) by removing ''42 U.S.C. 7474h'' and adding in its place ''50 U.S.C. 2704(c)(2)''.

■ 75. Section 926.7104 is revised to read as follows:

§ 926.7104 Contract clause.

The contracting officer shall insert the clause at 952.226–74, Workforce Restructuring and Displaced Employee Hiring Preference, in contracts (both non-management and operating contracts and management and operating contracts), except for contracts for commercial items, pursuant to 41 U.S.C. 403, that exceed $500,000.

PART 927—PATENTS, DATA, AND COPYRIGHTS

■ 76. The authority citation for part 927 continues to read as follows:

Authority: Atomic Energy Act of 1954, as amended (42 U.S.C. 2168, 2182, 2201); Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 (42 U.S.C. 7261a.); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 4201 *et seq.*)

§ 927.200 [Removed]

■ 77. Section 927.200 is removed.

■ 78. Section 927.201–1 is revised to read as follows:

§ 927.201–1 General.

For the purposes of this subpart, ''research and development (R&D)'' includes ''research, development, and demonstration.'' In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project if the patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Patent and Copyright Infringement Liability and Patent Indemnity provisions or clauses or what other action might be deemed appropriate.

§ 927.206 [Removed]

■ 79. Section 927.206 is removed.

§ 927.206–1 [Redesignated as 927.202]

■ 80. Section 927.206–1 is redesignated as section 927.202.

§ 927.206–2 [Redesignated as 927.202–5]

■ 81. Section 927.206–2 is redesignated as section 927.202–5.

■ 82. Amend newly redesignated section 927.202 by revising the section heading to read as follows:

§ 927.202 Royalties.

* * * * *

■ 83. Amend newly redesignated section 927.202–5 by revising the section heading to read as follows:

§ 927.202–5 Solicitation provisions and contract clause.

* * * * *

§ 927.207 [Redesignated as 927.203]

■ 84. Section 927.207 is redesignated as section 927.203.

§ 927.207–1 [Redesignated as 927.203–1]

■ 85. Section 927.207–1 is redesignated as section 927.203–1.

■ 86. Newly redesignated section 927.203 is revised to read as follows:

§ 927.203 Security requirements for patent applications containing classified subject matter.

§ 927.302 [Redesignated as 927.302–70]

■ 87. Section 927.302 is redesignated as sections 927.302–70.

§ 927.300 [Redesignated as 927.302]

■ 88. Section 927.300 is redesignated as section 927.302.

■ 89. Newly redesignated section 927.302 is revised to read as follows:

§ 927.302 Policy.

(a) *Introduction.* (1) A primary mission of the Department of Energy (DOE) is to conduct research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish this mission, DOE must work in cooperation with industry in the development of new energy sources and achieve the ultimate goal of widespread commercial utilization of those energy sources in the shortest practicable time. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(2) Another primary mission of DOE is to manage the Nation's nuclear weapons programs and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To support DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, the technology developed in these programs should be made available for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the granting of waivers in these programs may be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

(b) *Government right to receive title.* Pursuant to 42 U.S.C. 2182 and 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and other entities that are not beneficiaries of 35 U.S.C. 200 *et seq.* Regulations dealing with Department's authority to waive its title to subject inventions, including the relevant statutory objectives, exist at 10 CFR part 784. Pursuant to that section, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

■ 90. Newly redesignated section 927.302–70 is revised to read as follows:

§ 927.302–70 § Additional policy.

(a) In this section and 927.303, *background patent* means a U.S. patent covering an invention or discovery that is not a subject invention (as defined at 35 U.S.C. 201(e)) and that is owned or controlled by the Contractor at any time through the completion of the contract:

(1) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon; and

(2) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(b) Except for contracts with organizations that are beneficiaries of Public Law 96–517, the United States, as represented by DOE, shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive,

revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(c) Normally, contracts will not include background patent and background data provisions. Under special circumstances, however, to provide heightened assurance of commercialization, a provision providing for a right to require licensing to third parties of background inventions, limited rights data or restricted computer software may be included (*see* 927.303(d)(5)). Inclusion of such a provision will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. A contract may include the right to license the Government and third-party contractors for special Government purposes when future availability of the technology would also benefit the Government. The scope of any such background patent or data licensing is subject to negotiation.

(d) The Assistant General Counsel for Technology Transfer and Intellectual Property shall:

(1) Determine whether reported inventions are subject inventions under the patent rights clause of the contract;

(2) Determine whether and where patent protection will be obtained on inventions;

(3) Represent DOE before domestic and foreign patent offices;

(4) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(5) Represent DOE in patent, trademark, technical data, copyright, and other intellectual property matters not specifically reserved to the Head of the Agency or designee under this part.

■ 91. Section 927.303 is revised to read as follows:

§ 927.303 Contract clauses.

(a)(1) Insert a patent rights clause in all solicitations and contracts for experimental, research, developmental, or demonstration work as prescribed in this section.

(2)–(3) [Reserved]

(4) For M&O contracts, certain decontamination and decommissioning activities and the building and/or operation of other DOE facilities, see subpart 970.27.

(d) The Contracting Officer shall use the clause at 952.227–13, Patent Rights—Ownership by the Government, except for—

(1) *Contracts for construction work or architect-engineer services.* When the services can be expected to involve only ''standard types of construction'' such as involving previously developed equipment, methods, and processes as described in FAR 27.303(a)(3), the Contracting Officer shall not include a patent clause;

(2) *Contracts with domestic small business firms or nonprofit organizations (see FAR 27.301).* In such cases, the Contracting Officer shall use the clause at 37 CFR 401.14, Standard Patent Rights, and Alternate I of 952.227–11 that includes the agency implementing regulations specific for DOE, suitably modified to identify the parties, in all contracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, unless the work is subject to an Exceptional Circumstances Determination by DOE or another exception (see 37 CFR 401.3(a)). If the Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021 (S&E DEC) or any other Determination of Exceptional Circumstances under the Bayh-Dole Act (DEC) is applicable, the Contractor shall include the clause at 37 CFR 401.14 and Alternate II of 952.227–11;

(3) *Waivers of rights.* In cases where DOE grants an advance waiver or waives its rights in an identified invention pursuant to 10 CFR part 784, Contracting Officers shall consult with patent counsel on appropriate clauses;

(4) *Contracts for the design, construction, operation, or management (or the integration of a collection of contracts for the same purpose) of a Government-owned research, development, demonstration or production facility.* In such cases, the Government must be accorded certain rights, applicable to further use of the facility by or on behalf of the Government after contract termination or completion. For such contracts, the Contracting Officer shall include Alternate II with the clause at 952.227–13;

(5) *Background patent rights.* For contracts involving DOE background patent rights, the Contracting Officer shall use Alternate I to the clause at 952.227–13. Alternate I may be modified with the concurrence of Patent Counsel in order to reflect the equities of the contracting parties in particular situations; or

(6) *U.S. Competitiveness.* If the funding program is subject to the S&E DEC, then the Contracting Officer shall use Alternate II to the clause at 952.227–13 when Patent Counsel has determined that the S&E DEC applies to the Contractor's funding and should be included in the contract.

■ 92. Amend section 927.304 by:

■ a. In the first sentence, removing ''952.227–11'' and adding in its place ''37 CFR 401.14''; and

■ b. Revising the second sentence.

The revision reads as follows:

§ 927.304 Procedures.

* * * This section supplements FAR 27.304–1(c).

■ 93. The heading for subpart 927.4 is revised to read as follows:

Subpart 927.4—Rights in Data and Copyrights

■ 94. Section 927.401 is added to read as follows:

§ 927.401 Definitions.

Technical data means data (other than computer software) of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database (see appendix A to subpart D of 2 CFR part 910).

§ 927.402 and 927.402–1 [Removed]

■ 95. Sections 927.402 and 927.402–1 are removed.

§ 927.402–2 [Redesignated as 927.402]

■ 96. Section 927.402–2 is redesignated as section 927.402.

■ 97. Amend newly redesignated section 927.402 by revising the introductory text to read as follows:

§ 927.402 Policy.

The technical data and scientific and technical information (STI) policies are directed toward achieving the following objectives:

* * * * *

§ 927.403 [Removed]

■ 98. Remove section 927.403.

§ 927.404 and 927.404–70 [Redesignated as 927.404–70 and 927.404–71]

■ 99. Sections 927.404 and 927.404–70 are redesignated as sections 927.404–70 and 927.404–71, respectively.

■ 100. Newly redesignated section 927.404–70 is revised to read as follows:

§ 927.404–70 Rights in technical data in subcontracts.

(a) Prime contractors and higher-tier subcontractors, in meeting their obligations with respect to contract data, must obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this subpart and subject to the approval of the Contracting Officer, where required, prime contractors or higher-tier subcontractors must select appropriate technical data provisions for their subcontracts.

(1) In many, but not all instances, use of the clause at FAR 52.227–14, Rights in Data—General, as supplemented pursuant to this subpart, in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V to the clause at FAR 52.227–14 normally should be obtained only in first-tier subcontracts for research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(2) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the Contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract award without written authorization of the Contracting Officer.

(3) In prime contracts or higher-tier subcontracts that contain the clause at FAR 52.227–16, Additional Data Requirements, the Contractor or higher-tier subcontractor must determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract or higher-tier subcontract.

(b) As is the case for DOE in its determination of technical data requirements, the clause at FAR 52.227–16, Additional Data Requirements, should not be used at any subcontracting tier where the technical data requirements are fully known. Normally, the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the subcontractor's limited rights data or restricted computer software for their private use, and they shall not acquire rights to limited rights data or restricted computer software on behalf of the Government for standard commercial items without the prior approval of Patent Counsel.

■ 101. Amend newly redesignated section 927.404–71 by revising the fourth sentence to read as follows:

§ 927.404–71 Statutory programs.

* * * Generally, such clauses will be based upon the clause at FAR 52.227–14, Rights in Data-General, with appropriate modifications to define and protect the ''protected data'' in accordance with the applicable statute. * * *

■ 102. Sections 927.406 and 927.406–4 are added to read as follows:

§ 927.406 Acquisition of data.

§ 927.406–4 Acquisition and use of technical data.

To meet the objectives stated in 927.402, DOE has extensive technical data needs.

(a) Section 982 of the Energy Policy Act of 2005 (EPAct 2005, 42 U.S.C. 16352) mandates that the Secretary of Energy, through the Office of Scientific and Technical Information, shall maintain within the Department publicly available collections of STI resulting from research, development, demonstration, and commercial-applications activities supported by DOE.

(b) Section 105 of the DOE Energy Research and Innovation Act (Pub. L. 115–246) further mandates that DOE establish and maintain a public database populated with information on unclassified research and development projects, as well as relevant literature and patents.

(c) The legal rights in technical data acquired by the Government through DOE contracts, other than management and operating (M&O) contracts (*see* 970.2704), or contracts involving the production of data necessary for DOE sites/facilities management or operations, are set forth in the clause at FAR 52.227–14, Rights in Data—General, as supplemented in accordance with this subpart. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known technical data delivery requirements shall be set forth as part of the contract. For Research and Development contracting, requirements for results (conveyed as STI) are addressed in 935.010 and should be set forth in the contract.

(d) Contracting Officers shall contact Patent Counsel assisting their contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures set forth in this subpart and FAR subpart 27.4. In particular, Contracting Officers shall seek the advice of Patent Counsel regarding any situation not in conformance with this subpart, including the inclusion or modification of alternate paragraphs of the clause at FAR 52.227–14, as supplemented pursuant to this subpart, the exclusion of specific items from that clause, the exclusion of the clause at FAR 52.227–16, Additional Data Requirements, and the inclusion of any special provisions in a particular contract. Deviations shall follow the requirements in FAR subpart 1.4 and subpart 901.4.

(e) Contractors are required by Alternate VIII of the clause at 952.227–14, as supplemented pursuant to this subpart, to acquire permission from DOE Patent Counsel to assert copyright in any data including computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, and DOE's statutory dissemination obligations. When a contractor requests permission to assert copyright, Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5227–2, Rights in Data—Technology Transfer.

(f) In many situations the achievement of DOE's objectives would be frustrated if the Government, at time of award, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software, or both. Such rights are necessary for the practice of subject inventions or data first produced or delivered under the contract. When the contract is for research, development, or demonstration, Contracting Officers should consult with program officials and Patent Counsel to determine whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of such organizations have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the Contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data, which are limited rights data and restricted computer software.

■ 103. Section 927.409 is revised to read as follows:

§ 927.409 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at FAR 52.227–14, Rights in Data-General, and supplement it with Alternates I and V of FAR 52.227–14 and Alternate VIII of FAR 952.227–14, Rights in Data-General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract. Generally, a contract should contain only one data rights clause. However, where more than one is needed as prescribed in paragraph (b) of this section, the contact should distinguish the portion of contract performance to which each pertains.

(b)(1) However, the rights in data in specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405–1, the Patent Counsel shall insert the clause at FAR 52.227–17, Rights in Data-Special Works, including Alternate I. The clause at FAR 52.227–14, Rights in Data-General, may be included in the contract and made applicable to data other than special works, as appropriate (see paragraph (e) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405–2 (see paragraph (f) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (see paragraph (i) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case the Patent Counsel shall utilize the clause at FAR 52.227–17, Rights in Data-Special Works, including Alternate I;

(v) A Small Business Innovation Research contract (see paragraph (h) of FAR 27.409);

(vi) For management and operation of a DOE facility (see 970.2704) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, certain decontamination and decommissioning activities, or the building and/or operation of other DOE facilities, after consultation with Patent Counsel (see 927.402–1(b));

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (see 927.404–70);

(viii) For basic or applied research with educational institutions (other than those in which software is specified for delivery unless the software will be released as open source software or other special circumstances exist), the Patent Counsel may use the clause at FAR 52.227–14 with its Alternate IV instead of Alternate VIII of the clause at FAR 952.227–14, Rights in Data-General;

(ix)(A) Requiring license rights that are deemed necessary, the Patent Counsel should supplement the clause at FAR 52.227–14, Rights in Data—General, with Alternate VI, as provided at 952.227–14, Rights in Data—General, which will normally be sufficient to cover limited rights data and restricted computer software for items and processes used in the contract and necessary to ensure widespread commercial use or practical utilization of a subject of the contract. The phrase ''subject of the contract'' in Alternate VI is intended to limit licensing to the fields of technology specifically contemplated under the contract; the phrase may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the clause at 952.227–13, Patent Rights—Ownership by the Government.

(B) Where limited rights data and restricted computer software are the main purpose or basic technology of the research, development, or demonstration effort of the contract (rather than subcomponents, products, or processes ancillary to the contract effort), the limitations in paragraphs (k)(1) through (4) of Alternate VI of the clause at 952.227–14 should be supplemented or deleted. Paragraph (k) of Alternate VI further provides that limited rights data or restricted computer software may be specified in the contract as being excluded from or not subject to the licensing requirements. This exclusion is implemented by limiting the applicability of the provisions of paragraph (k) of Alternate VI to only those classes or categories of limited rights data and restricted computer software determined essential for licensing. Although contractor licensing may be required under paragraph (k) of Alternate VI, the final resolution of questions regarding the scope of such licenses and the terms thereof, including provisions for confidentiality, and reasonable royalties, is left to the negotiation between the contractor and the Contracting Officer; or

(x) Where the contractor has access to certain categories of DOE-owned Category C–24 restricted data, as set forth in 10 CFR part 725, Alternate VII of 952.227–14, Rights in Data-General, shall be used. DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data owned by DOE, appropriate limitations on the use of such data must be specified.

(d) The contracting officer shall insert the clause at FAR 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less.) See FAR 27.406–2. Patent Counsel may use the clause at FAR 52.227–16, Additional Data Requirements, along with the clause at FAR 52.227–14, Rights in Data—General, to require the contractor to furnish additional technical data, in instances where technical data requirements were not known at the time of award. There is, however, a built-in limitation on the kind of technical data that a contractor may be required to deliver under either the contract or the Additional Data Requirements clause. This limitation is in the withholding provision of paragraph (g) of FAR 52.227–14, Rights in Data—General, which provides that the contractor need not furnish limited rights data or restricted computer software. Unless Alternate II or III to the clause at FAR 52.227–14 is used, the Additional Data Rights clause is specifically intended that the contractor may withhold limited rights data or restricted computer software even though a requirement for technical data specified in the contract or called for delivery (pursuant to the clause at FAR 52.227–16) would otherwise require the delivery of such data.

(m) Contracting officers shall incorporate the solicitation provision at FAR 52.227–23, Rights to Proposal Data (Technical), in all requests for proposals.

(n) Contracting officers shall include the solicitation provision at 952.227–84 in all solicitations involving research, developmental, or demonstration work.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 104. The authority citation for part 931 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 105. Section 931.205–18 is revised to read as follows:

§ 931.205–18 Independent research and development and bid and proposal costs.

(c)(1) Independent research and development (IR&D) costs are

recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and they have potential benefit or relationship to the DOE program. The term ''DOE program'' encompasses the DOE total mission and its objectives. Bid and proposal (B&P) costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

(2) [Reserved]

§ 931.205–47 [Amended]

■ 106. Amend section 931.205–47 in paragraph (h), in the definition of ''Employee whistleblower action'', by removing ''42 U.S.C. 7239'' and adding in its place ''50 U.S.C. 2702''.

PART 932—CONTRACT FINANCING

■ 107. The authority citation for part 932 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 108. Amend section 932.970 by revising paragraph (b) to read as follows:

§ 932.970 Implementing DOE policies and procedures.

* * * * *

(b) *Accelerated payments to limit contractor working capital requirements.* Contracting Officers may specify payment due dates that are less than the standard under the Prompt Payment Act when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be beneficial to the Government by reducing the contractor's working capital requirements. In such cases, the Contracting Officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards will provide sufficient time for officials to perform an appropriate review of the invoices before they are paid. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized. In all cases whereby the contract specifies payment due dates that are sooner than those required under the relevant prompt payment requirements, the contract will permit the Contracting Officer to unilaterally authorize additional time for review of invoices if needed to perform an adequate review of those invoices prior to payment.

■ 109. Section 932.971 is added to read as follows:

§ 932.971 Electronic submission of invoices/vouchers.

In general, Contracting Officers should insert the clause at 952.232–7, Electronic Submission of Invoices/Vouchers, in contracts. However, after consultation with the Office of the Chief Financial Officer, the Contracting Officer may approve alternate methods of submission.

Subpart 932.70 [Removed]

■ 110. Subpart 932.70, consisting of 932.7002 through 932.7004–3, is removed.

PART 933—PROTESTS, DISPUTES, AND APPEALS

■ 111. The authority citation for part 933 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 112. Section 933.103 is revised to read as follows:

§ 933.103 Protests to the agency.

(a) *Reference.* The Department of Energy (DOE) does not accept or adjudicate protests from prospective subcontractors.

(c) The Department of Energy encourages direct negotiations between an offeror and the contracting officer, including alternative dispute resolution (ADR) techniques. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraphs (f) and (g) of this section.

(f)(5) Upon receipt of a protest filed against DOE, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iv).

(6) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(i) The protester requests that the protest be decided by the Senior Procurement Executive;

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made;

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy; or

(iv) The SPE elects to decide the protest.

(g) The official identified in paragraph (f)(6) of this section will render a decision on a protest within 35 calendar days, unless a longer period of time is deemed necessary.

■ 113. Section 933.104 is revised to read as follows:

§ 933.104 Protests to GAO.

The GAO does not have jurisdiction over protests from subcontractors.

(a)(2) The contracting officer shall provide the notice of protest.

(b)(1) The finding required under FAR 33.104(b)(1) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes a contract award. The finding shall also address the likelihood that the protest will be sustained by the GAO.

(c)(2) The finding required by FAR 33.104(c)(2) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes contract performance.

(g) *Notice to GAO.* DOE's policy is to comply promptly with the recommendations in Comptroller General decisions unless compelling reasons exist. Any decision to not comply shall be substantiated by the HCA making the award, after approval by the SPE. The report to the GAO regarding a decision to not comply with the GAO's recommendation shall be transmitted to the GAO by the HCA making the award or, if a DOE-wide policy issue is involved, the report shall be provided by the SPE.

■ 114. Section 933.106 is revised to read as follows:

§ 933.106 Solicitation provisions and contract clauses.

(a) When using the provision at FAR 52.233–2, Service of Protest, the Contracting Officer shall insert the provision at 952.233–2, Service of Protest.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

■ 115. The authority citation for part 935 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 116. Section 935.010 is revised to read as follows:

§ 935.010 Scientific and technical reports.

(c) For purposes of section 982 of the Energy Policy Act of 2005 (42 U.S.C. 16322), the research results, referred to as scientific and technical information (STI), are derived from management and operation (M&O), research and development (R&D), facility management, and non-major site/facility management type contracts. STI must be documented, managed, and electronically submitted to the Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System. DOE Order 241.1B, Scientific and Technical Information Management, or successor, sets forth requirements for STI management and the types of STI products to be announced and submitted to DOE OSTI. STI products identified in DOE Order 241.1B are reportable to OSTI whether publicly releasable, controlled unclassified information or classified.

(d) The Contracting Officer shall ensure that the requirements for STI management, as prescribed in DOE Order 241.1B, or its successor version, are included in accordance with the attendant Contractor Requirements Document or in the statement of work.

■ 117. Section 935.070 is revised to read as follows:

§ 935.070 Research misconduct.

The policy on research misconduct, set forth at 10 CFR part 733, applies to individuals who propose, perform or review research of any kind for the Department of Energy pursuant to a contract. The regulations in 10 CFR part 733 apply regardless of where the research or other activity is conducted or by whom.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 118. The authority citation for part 936 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

§ 936.202–71 [Removed]

■ 119. Section 936.202–71 is removed.

PART 941—ACQUISITION OF UTILITY SERVICES

■ 120. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 121. Section 941.201–70 is revised to read as follows:

§ 941.201–70 Policy.

Utility services shall be acquired in accordance with 48 CFR part 41 and the Energy Policy Act of 2005 (EPAct 2005) (25 U.S.C. 3502). Pursuant to EPAct 2005, the requirement must be publicized appropriately, and pricing may not exceed prevailing market prices for energy. For Department of Energy (DOE) programs, Acquisition Plans for utility services shall be submitted to DOE's Federal Energy Management Program (FEMP) for review, technical input, and concurrence. For NNSA programs, FEMP review and technical input may be obtained, but FEMP concurrence is not required.

PART 942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 122. The authority citation for part 942 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

§ 942.705–1 [Amended]

■ 123. Amend section 942.705–1 by removing paragraph (a)(3).

§ 942.705–3 through 942.705–5 [Removed]

■ 124. Sections 942.705–3 through 942.705–5 are removed.

■ 125. Subpart 942.71 is added to read as follows:

Subpart 942.71—Conditional Payment of Fee, Profit, and Other Incentives

§ 942.7100 Conditional payment of fee, profit, and other incentives.

(a) If the contractor does not meet the contract's requirements relating to environment, safety and health (ES&H) (see subpart 923.70), security or safeguarding of Restricted Data and other classified information (see subpart 904.4), or business and financial systems, the Contracting Officer may unilaterally reduce otherwise earned fee, fixed fee, profit, or other incentives in accordance with the clause at 952.242–71, Conditional Payment of Fee, Profit, and Other Incentives.

(b) When reviewing performance failures that would warrant a reduction of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause. The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity—

(1) Prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.242–71, Conditional Payment of Fee, Profit, or Other Incentives; and

(2) Prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(c) Before pursuing a reduction in the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, the Contracting Officer must coordinate with the Office of Enforcement within the Office of Enterprise Assessments (or designated successor office).

(d) Unless the clause for management and operating contracts is prescribed (see 970.1504–3(b)), insert the clause at 952.242–71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204–2, Security Requirements, the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, or both clauses.

PART 945—GOVERNMENT PROPERTY

■ 126. The authority citation for part 945 continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

■ 127. Section 945.000 is revised to read as follows:

§ 945.000 Scope of part.

This part and FAR part 45 are not applicable to the management of property by management and operating contractors or other on-site contractors designated in 41 CFR chapter 109, unless otherwise stated in the applicable contract.

§ 945.101, 945.102–70, and 945.102–71 [Removed]

■ 128. Sections 945.101, 945.102–70, and 945.102–71 are removed.

§ 945.570–1 [Amended]

■ 129. Amend section 945.570–1 in paragraph (g) by removing the words ''Personal Property Policy Division'' and adding in their place ''Office of Asset Management''.

§ 945.602, 945.602–3, 945.602–70, and 945.603 [Removed]

■ 130. Sections 945.602, 945.602–3, 945.602–70, and 945.603 are removed.

§ 945.670–1 [Amended]

■ 131. Amend section 945.670–1 by removing ''48 CFR 45.606–3'' and adding in its place ''FAR 2.101''.

§ 945.670–3 [Removed]

■ 132. Section 945.670–3 is removed.

§ 945.671 [Amended]

■ 133. Amend section 945.671 by removing ''41 CFR 109–43.5 and 45.41, or its successor and 48 CFR 45.302'' and adding in its place ''41 CFR chapter 109 and FAR 45.302''.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 134. The authority citation for part 951 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ 135. Amend section 951.102 by revising paragraph (c)(1) to read as follows:

§ 951.102 Authorization to use Government supply sources.

* * * * *

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of activity address codes is the Systems Division, within the Office of Acquisition Management.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 136. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

■ 137. Section 952.203–1 is added to read as follows:

§ 952.203–1 Identification of contractor employees.

As prescribed at 903.1004, insert the following clause:

Identification of Contractor Employees (XXX 20XX)

Contractors and their employees shall be properly identified in communications (*e.g.,* email communications, texts, video and teleconference calls, etc.) and in meetings so that all participants can differentiate between Federal employees and contractor employees.

(End of clause)

■ 138. Section 952.204–2 is revised to read as follows:

§ 952.204–2 Security requirements.

As prescribed in 904.404(d)(1), insert the following clause:

Security Requirements (XXX 20XX)

(a) *Definitions.* ''*Classified Information*'' means information that is classified as Restricted Data or Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

''*Contracting Officer*'' means the DOE Contracting Officer.

''*Contract*,'' when this clause is used in a subcontract, means subcontract.

''*Contractor*,'' when this clause is included in a subcontract, means subcontractor.

''*Cyber system*'' means any combination of facilities, equipment, personnel, procedures, and communications integrated to provide cyber services; examples include business systems, control systems, and access control systems (National Infrastructure Protection Plan, 2009).

''*Restricted Data*'' means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

''*Formerly Restricted Data*'' means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense (DoD) that the information—

(1) Relates primarily to the military utilization of atomic weapons; and

(2) Can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

''*National Security Information*'' means information that has been determined, pursuant to E.O. 13526, Classified National Security Information, as amended, or any predecessor or successor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

''*Special Access Program*'' means any program that is established to control access, distribution, and to provide protection for particularly sensitive classified information beyond that normally required for RESTRICTED DATA, TOP SECRET, SECRET, or CONFIDENTIAL information.

''*Special nuclear material*'' means—

(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that, pursuant to section 51 of the Atomic Energy Act of 1954 (42 U.S.C. 2071) has been determined to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

(b) *Responsibility.* The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(c) *Regulations.* The Contractor shall comply with all security and classification regulations and contract requirements of DOE.

(d) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information, special nuclear material, or Special Access Program (SAP) information, except in accordance with the Atomic Energy Act of 1954, as amended, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material.

(2) The Contractor shall conduct a thorough review or background review, as defined at 48 CFR 904.401, of any uncleared applicants or employees, and must test individuals for illegal drugs prior to selecting them for positions requiring DOE access authorizations.

(i) The review must—(A) Verify applicant's or employee's educational

backgrounds, including any high school diplomas obtained within the past five years, and degrees or diplomas granted by an institution of higher learning;

(B) Contact listed employers for the last three years and listed personal references;

(C) Conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and

(D) Conduct a credit check and other checks as appropriate.

(ii) For DOE access authorization, contractor reviews are not required for applicants who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968 of August 2, 1995, as amended, Access to Classified Information, sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive orders, including those—

(A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and Health Insurance Portability and Accountability Act; and

(B) prohibiting discrimination in employment, such as under the Genetic Information Nondiscrimination Act of 2008, ADAAA, Title VII and the Older Workers Benefit and Protection Act of 1990, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local DOE security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(vii) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.;* 18 U.S.C. 793 and 794).

(e) *Foreign ownership, control, or influence (FOCI).* (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of FOCI over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests,* executed prior to award of this contract. The Contractor will submit the FOCI information in the format directed by DOE. When completed, the Contractor must sign the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer and to the cognizant security office.

(2) If a Contractor has changes involving FOCI, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

(f) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(g) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph

and related DOE policies, in all subcontracts that will require subcontractor employees to possess access authorizations.

Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests,* as required in title 48 of the CFR consistent with the clause at 48 CFR 952.204–73, Facility Clearance, and obtain a foreign ownership, control and influence determination prior to award of a subcontract. Facility clearance may be granted prior to award or after award of a subcontract in accordance with the clause at 48 CFR 952.204–73, Facility Clearance. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.

(End of clause)

■ 139. Section 952.204–70 is revised to read as follows:

§ 952.204–70 Classification/ Declassification.

As prescribed in 904.404(d)(2), the following clause shall be included in all contracts which involve classified information:

Classification/Declassification (XXX 20XX)

(a) *Definitions.* ''Classified information'' means information that is classified as Restricted Data, Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

''Contractor,'' as used in this clause includes subcontractors.

''Document'' means any recorded information, regardless of the nature of the medium or the method or circumstances of recording (*e.g.,* email).

''Information'' means facts, data, or knowledge itself.

''Material'' means a product or substance that contains or reveals information, regardless of its physical form or characteristics.

(b) The Contractor shall comply with all provisions of DOE's regulations and DOE directives applicable to work involving the classification and declassification of information, documents, or material. (Note: The decision to classify or declassify information is considered an inherently Governmental function. As such, only Government personnel may serve as Federal Government original classifiers. Both Government and Contractor personnel may serve as derivative classifiers; this involves making decisions based upon classification guidance and, where authorized by DOE directives, portion marked source documents that reflects the decisions of Federal Government. Both Government and Contractor personnel may also serve as derivative declassifiers; this involves making decisions based only on classification guidance).

(c) The Contractor shall ensure that any document or material that may contain classified information is reviewed by either a derivative classifier, or in the case of documents intended for public release, a classification officer or a specifically designated DC, in accordance with classification regulations, and DOE directives. In accordance with DOE directives DCs must use classification/ declassification guidance furnished to the Contractor by the DOE or a portion marked source document, when authorized to determine whether it contains classified information prior to dissemination. For information not addressed in classification/ declassification guidance, but whose sensitivity appears to warrant classification, the Contractor shall ensure it is reviewed by a Federal Government original classifier or the Director, Office of Classification in accordance with classification directives or regulations.

(d) The Contractor shall ensure that existing classified documents (containing either Restricted Data, Formerly Restricted Data, Transclassified Foreign Nuclear Information, or National Security Information) in its possession or under its control are periodically reviewed by a Federal Government or Contractor derivative declassifier in accordance with classification regulations, DOE directives and classification/ declassification guidance furnished to the Contractor by DOE to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents that no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents that are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access while minimizing security costs.

(e) *Subcontracts.* The Contractor shall insert this clause in any subcontract that involves or may involve access to classified information.

(End of clause)

■ 140. Section 952.204–73 is revised to read as follows:

§ 952.204–73 Facility clearance.

As prescribed in 904.404(d)(5), insert the following provision in all solicitations and contracts which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests, for contracts or subcontracts subject to the provisions of subpart 904.70:

Facility Clearance (XXX 20XX)

Notices to Offerors and the Contract Requirements of the Successful Offeror (Contractor)

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations. An offeror who has either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership, control and influence information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office that issued this solicitation.

(a) *Use of Certificate Pertaining to Foreign Interests, Standard Form 328.* (1) The contract work to be performed by the successful offeror anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's (that is, the successful offeror's) organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required

supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor must submit the FOCI Package in the format directed by DOE. After the FOCI Package is completed, the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the offeror in the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the successful offeror/Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Notice of changes in FOCI information that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be reported concurrently to the cognizant security office.

(b) *Definitions.* (1) *Foreign Interest* means any of the following—

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and who possess or are in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) *Facility Clearance and Employees Requiring Access Authorizations Prior to DOE's Granting Facility Clearance.*

(1) A Facility Clearance is required for this contract, although not necessarily prior to contract award. A favorable FOCI determination for this contract is required prior to contract award. It must be rendered by the responsible cognizant security office. The Contracting Officer may require the offeror to submit additional information as deemed pertinent to this determination.

(i) The DOE must determine that awarding this contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(ii) Before contract award, after obtaining a favorable FOCI determination, the successful offeror/Contractor may be eligible to obtain a Facility Clearance.

(iii) If the successful offeror/Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.

(2) The DOE may grant certain of the Contractor's Key Management Personnel and the Contractor's Facility Security Officer Interim Access Authorization. If granted Interim Access Authorization, the Contractor's Key Management Personnel and the Contractor's Facility Security Officer will have access to classified information or special nuclear material.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but that require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type of facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders (or vendors for purchase orders) requiring access authorizations for access to classified information or special nuclear material. Subcontractors shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

Notice to Offerors—Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the offeror;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders; or, if privately owned, the audited, consolidated financial information for the most

recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents are provided;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet is provided.

Note: A FOCI submission must be attached for each tier parent organization (*i.e.,* ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

(End of provision)

■ 141. Section 952.204–74 is added to read as follows:

§ 952.204–74 Counterintelligence.

As prescribed in 904.404(d)(7), insert the following clause:

Counterintelligence (XXX 20XX)

(a) The Contractor shall take all reasonable precautions in performing the work under this contract to protect Department of Energy (DOE) programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with the current version of DOE Order 475.1, Counterintelligence Program; E.O. 12333 of December 4, 1981, U.S. Intelligence Activities; and other applicable national and DOE counterintelligence requirements.

(b) The Contractor shall appoint qualified employees to function as contractor counterintelligence officers. A contractor counterintelligence officer is responsible for conducting defensive counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of counterintelligence interest; immediately reporting targeting, suspicious activity and other counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in E.O. 12333, DOE Order 475.1, and other applicable national and DOE counterintelligence requirements.

(End of clause)

§ 952.204–76 [Removed]

■ 142. Section 952.204–76 is removed.

■ 143. Section 952.204–77 is amended by revising the introductory text to read as follows:

§ 952.204–77 Computer security.

As prescribed in 904.404(d)(6), insert the following clause:

* * * * *

■ 144. Section 952.204–78 is added to read as follows:

§ 952.204–78 DOE Directives.

As prescribed in 904.7401, insert the following clause:

DOE Directives (XXX 20XX)

(a) In performing work under this contract, the Contractor shall comply with the requirements of Department of Energy Directives, or parts thereof, identified in the List of Applicable Directives appended to this contract, identified in the Statement of Work or identified in a special clause within this contract. The Contracting Officer may revise the list of applicable Directives by bilateral modification to the contract. Prior to the modification, the Contracting Officer shall notify the Contractor in writing of DOE's intent and provide the contractor with the opportunity to: assess the impact on cost, funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days of being notified, the Contractor shall advise the Contracting Officer in writing of the potential impact of the modification. The Contracting Officer and Contractor shall decide whether or not to proceed with the modification. Before executing the modification, they must agree to any appropriate changes to other contract terms and conditions, including cost and schedule, pursuant to the clause of this contract entitled ''Changes.''

(b) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(End of clause)

■ 145. Section 952.215–70 is revised to read as follows:

§ 952.215–70 Key personnel.

As prescribed in 915.408–70, the contracting officer shall insert the following clause:

Key Personnel (XXX 20XX)

(a) The personnel listed below or elsewhere in this contract [Insert cross-reference, if applicable] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer and submit justification including resumes for any proposed substitutions, at least [insert number] calendar days in advance; and

(2) Obtain the Contracting Officer's written approval. Notwithstanding the foregoing, the Contractor may immediately remove or suspend any key person if necessary to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203–3, Contractor's Organization, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel. The Contractor must provide written notice to the cognizant security office if changes to the list of personnel affect key personnel connected to a facility clearance.

[*Insert List of Key Personnel by position/title, reflecting the actual position title of the top-level key personnel, such as Program Manager, Laboratory Director, Project Manager, etc. unless listed elsewhere in the contract*]

(End of clause)

§ 952.216–15 [Removed]

■ 146. Section 952.216–15 is removed.

■ 147. Section 952.219–70 is revised to read as follows:

§ 952.219–70 DOE Mentor-Protégé program.

In accordance with 919.7014 insert the following provision:

DOE Mentor-Protégé Program (XXX 20XX)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist small business concerns, Historically Black Colleges and Universities and Minority Institutions, and other

minority institutions of higher learning in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Any DOE contractor that is interested in becoming a Mentor should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

(End of provision)

■ 148. Section 952.223–71 is revised to read as follows:

§ 952.223–71 Integration of environment, safety, and health into work planning and execution.

As prescribed in 923.7003, insert the following clause:

Integration of Environment, Safety, and Health into Work Planning and Execution (XXX 20XX)

(a) *Definitions.* ''Employees'' means both contractor and subcontractor employees.

''Safety'' encompasses environment, safety and health, including pollution prevention and waste minimization.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees who manage or supervise employees.

(2) Clear lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established that, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System that, at a minimum, fulfills all conditions in paragraph (b) of this clause. Documentation of this system shall describe how the Contractor will—

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The system shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the system. The system shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its system for review and approval. Dates for submittal, discussions, and revisions to the system will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the system will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the system shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives in accordance with the DOE Directives clause. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) *Subcontracts.* The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the

Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

(End of clause)

§ 952.223–75 [Amended]

■ 149. Amend section 952.223–75 in the introductory text by removing ''923.7003(h)'' and adding in its place ''923.7003(g)''.

§ 952.223–76 and 952.223–77 [Removed]

■ 150. Sections 952.223–76 and 952.223–77 are removed.

■ 151. Section 952.223–78 is revised to read as follows:

§ 952.223–78 Sustainable acquisition program.

As prescribed in 923.172, insert the following clause:

Sustainable Acquisition Program (XXX 20XX)

(a) Pursuant to DOE policy, as specified in 48 CFR 923.170, the Contractor shall maintain a sustainable acquisition program that ensures procurement of environmentally preferable products and services as required of DOE by statute, regulation and Executive order. This program shall apply to all products and services acquired in performance of this contract, including first-tier subcontracts, which have reasonable opportunities for environmentally preferable purchasing, consistent with the requirements specified above.

(b) The Contractor shall coordinate its sustainable acquisition activities, and submit any required annual reports at the end of the Government fiscal year, through their Sustainability Coordinator (or equivalent), or as otherwise directed by the Contracting Officer. Reporting under this paragraph is only required if the contract offers subcontracting opportunities exceeding the simplified acquisition threshold in any contract year.

(c) *Subcontracts.* These provisions shall be flowed down only to first-tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy-efficient or environmentally sustainable products or services. When this clause is included in a subcontract, the word ''Contractor'' will be understood to mean ''Subcontractor.''

(End of clause)

■ 152. Section 952.226–70 is revised to read as follows:

§ 952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7008(b)(1), insert the following provision:

Subcontracting Goals Under Section 3021(A) of the Energy Policy Act of 1992 (Pub. L. 102–486) (XXX 20XX)

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this provision, has the meaning conveyed in 48 CFR 926.7002.

(b) Section 3021 of the EPAct 1992 establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract EPAct 1992 awards to EPAct 1992 target groups.

(c) The Offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the EPAct 1992 target groups. Individual goals shall be expressed in terms of a percentage of the Offeror's proposed contract dollar value. In addition, the Offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business Subcontracting Plan.

(End of provision)

■ 153. Section 952.226–71 is revised to read as follows:

§ 952.226–71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7008(b)(2), insert the following clause:

Utilization of Energy Policy Act 1992 Target Entities (XXX 20XX)

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns (48 CFR 52.219–8), the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the EPAct 1992 target groups.

(End of clause)

■ 154. Section 952.226–72 is revised to read as follows:

§ 952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7008(c), insert the following clause:

Energy Policy Act 1992 Subcontracting Goals and Reporting Requirements (XXX 20XX)

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Goals.* The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent;

(4) Qualified HUBZone small business concerns: * * * percent.

[* * * These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) *Reporting requirements.* (1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under 48 CFR 52.219–9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to the Individual Subcontract Report and/or the Summary Subcontract Report using the Electronic Subcontracting Reporting System (available at *https://www.esrs.gov/*) for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

■ 155. Amend section 952.226–73 by revising the section heading,

introductory text, clause heading and date, and paragraph (a) to read as follows:

§ 952.226–73 Energy Policy Act target group representation.

As prescribed in 926.7008(a)(1), insert the following provision:

Energy Policy Act of 1992 Target Group Representation (XXX 20XX)

(a) The Offeror is:

(1) __ An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, *i.e.,* students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof; or

(ii) Native Americans, *i.e.,* American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) __ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) __ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women; or

(4) Qualified HUBZone small business concerns, as defined at 48 CFR 2.101.

* * * * *

■ 156. Amend section 952.226–74 by revising the section heading and clause heading and date to read as follows:

§ 952.226–74 Workforce restructuring and displaced employee hiring preference.

* * * * *

Workforce Restructuring and Displaced Employee Hiring Preference (XXX 20XX)

* * * * *

■ 157. Amend section 952.227–9 by:
■ a. Revising the introductory text and clause date;
■ b. In paragraph (b):
■ i. Adding a heading; and
■ ii. Revising the first sentence of the paragraph; and
■ c. Adding a sentence at the end of paragraph (c).

The revisions and addition read as follows:

§ 952.227–9 Refund of royalties.

As prescribed in 927.202–5, insert the following clause:

Refund of Royalties (XXX 20XX)

* * * * *

(b) *Definition.* ''Royalties'' means any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. * * *

(c) * * * For contracts greater than five years in duration, the contractor shall furnish the statement to the Contracting Officer every five years.

* * * * *

■ 158. Section 952.227–11 is revised to read as follows:

§ 952.227–11 Patent rights—retention by the contractor.

Alternate I (XXX 20XX) As prescribed at 970.2703–2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications:

Replace the heading (''Standard Patent Rights'') with ''37 CFR 401.14 Standard Patent Rights with Alternate I of 48 CFR 952.227–11 Patent rights—retention by the contractor''.

Replace subparagraphs (g)(1) and (2) with the following:

(g) Subcontracts.

(1) The contractor will include this clause, suitably modified to identify the parties, in all subawards, regardless of tier, for experimental, developmental or research work to be performed by a domestic small business firm or nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subaward, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l), Communications, with the following:

(l) Communication.

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

(End of alternate)

Alternate II (XXX 20XX) As prescribed at 970.2703–2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications when the Determination of Exceptional Circumstances (DEC) under 35 U.S.C 202(a) applies:

Replace the heading (''Standard Patent Rights'') with ''37 CFR 401.14 Standard Patent Rights with Alternate II of 48 CFR 952.227–11 Patent Rights-Retention by the Contractor (DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES)''.

Add the following subparagraph:

(d)(3) Upon breach of paragraph (n) U.S. Competitiveness of this Patent Rights clause.

Replace subparagraphs (g)(1) and (2) with the following:

(g) Subcontracts.

(1) The contractor will include this clause, suitably modified to identify the parties, in all subawards, regardless of tier, for experimental, developmental or research work to be performed by a domestic small business firm or nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subaward, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l), Communications, with the following:

(l) Communication.

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

Add the following paragraphs (n) and (o):

(n) The Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (n) and shall inform DOE, in writing, of the

change in ownership within six months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (n). The Contractor will include this paragraph (n) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(o) The requirements, rights and administration of paragraph (n) are further clarified as follows:

1. Waivers. The Contractor (or any entity subject to paragraph (n)) may request a waiver or modification of paragraph (n). Such waivers or modifications may be granted when DOE determines that (1) the Contractor (or any entity subject to paragraph (n)) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (2) a waiver or modification would best serve the interests of the United States and the general public.

2. Final determination of breach of paragraph (n). If DOE determines the Contractor is in breach of paragraph (n), the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions under the award to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Contractor before any final written determination by DOE is issued.

3. Pursuant to Contractor's agreement in paragraph (n) to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (n): any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (n) suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (n), the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.

4. For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (n), the Contractor shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in paragraph (e)(1), unless DOE grants a license through a separately agreed upon licensing agreement.

5. Authority. The requirements and administration of paragraph (n) is in accordance with the Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021, or any other applicable DEC. A copy of the DEC is available at *https://www.energy.gov/gc/determination-exceptional-circumstances-decs.* By accepting or acknowledging the award, the Contractor is also acknowledging that it has received a copy of the DEC through the foregoing link. As set forth in 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. 201 affected by any DEC has the right to appeal the imposition of the DEC within thirty (30) working days from the Contractor's acceptance or acknowledgement of this award.

(End of alternate)

■ 159. Amend 952.227–13 by:

■ a. Revising the introductory text, clause date, and paragraphs (b)(2)(iii), (e)(2), (e)(3)(i), and (h)(1);

■ b. Removing paragraph (k);

■ c. Redesignating paragraphs (l) and (m) as paragraphs (k) and (l);

■ d. Revising the introductory text of newly redesignated paragraph (l)(2) and the last sentence of newly redesignated paragraph (l)(3); and

■ e. Adding Alternates I and II at the end of the section following ''(End of clause)''.

The revisions and additions read as follows:

§ 952.227–13 Patent rights—acquisition by the Government.

As prescribed at 927.303(d), insert the following clause:

Patent Rights—Acquisition by the Government (XXX 20XX)

* * * * *

(b) * * *

(2) * * *

(iii) Not less than sixty (60) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

* * * * *

(e) * * *

(2) Unless otherwise directed by DOE Patent Counsel, the Contractor shall disclose each subject invention to DOE through the iEdison invention management system within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) * * *

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

* * * * *

(h) * * *

(1) The contractor shall include the clause at 37 CFR 401.14 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental,

demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE or another exception in 37 CFR 401.3(a). In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

* * * * *

(l) * * *

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (l)(1) of this clause, the Contractor:

* * * * *

(3) * * * The forfeiture provision of this paragraph (l) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

* * * * *

Alternate I (XXX 20XX). As prescribed in 927.303(d)(5), insert Alternate I under special circumstances to provide for a right to require licensing of third parties to background inventions:

(m) *Background patents.* (1) *Background patent* means a domestic patent covering an invention or discovery which is not a subject invention, and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (m)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(End of alternate)

Alternate II (XXX 20XX). As prescribed in 48 CFR 927.303(d), the following modifications must be made when the ''Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies'' applies:

The Contracting Officer shall insert the phrase ''or upon a breach of paragraph (n) U.S. Competitiveness of this clause'' after ''fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause'' in the first sentence of paragraph (d)(1).

The Contracting Officer shall insert the following paragraph (n):

(n) *U. S. Competitiveness.* With regard to the license granted in paragraph (d)(1) of this clause, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s):

(1) Undergo a change in ownership amounting to a controlling interest, or

(2) Sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(End of alternate)

■ 160. Section 952.227–14 is revised to read as follows:

§ 952.227–14 Rights in data-general.

Alternate VI (XXX 20XX) As prescribed at 927.409(b)(1)(ix), insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) *Contractor licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees

have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of alternate)

Alternate VII (XXX 20XX) As prescribed in 927.409(b)(1), substitute the following for paragraph (b)(2)(i) of the clause at FAR 52.227–14:

(b)(2)(i) Assert copyright in data first produced in the performance of this contract (except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology) to the extent provided in paragraph (c)(1) of this clause.

(End of alternate)

Alternate VIII (XXX 20XX) As prescribed in 927.409(a), substitute the following for subparagraph (c)(1)(i) of the clause at FAR 52.227–14:

(c) *Copyright*—(1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the DOE Patent Counsel is required to assert copyright in all other data first produced in the performance of this contract. When such permission is granted, the DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(End of alternate)

■ 161. Section 952.227–17 is added to read as follows:

§ 952.227–17 Rights in data-special works.

Alternate I (XXX 20XX) As prescribed at 927.409(b)(1), substitute the following for subparagraph (c)(1)(ii) of the clause at FAR 52.227–17:

(c)(1)(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the DOE Patent Counsel may direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(End of alternate)

§ 952.227–82 [Removed]

■ 162. Section 952.227–82 is removed.

■ 163. Amend section 952.227–84 by revising the introductory text, clause date, and third sentence of the clause to read as follows:

§ 952.227–84 Notice of right to request patent waiver.

As prescribed in 927.409(n), insert this provision:

Right To Request Patent Waiver (XXX 20XX)

* * * Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at 37 CFR 401.14 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. * * *

■ 164. Amend section 952.231–71 by revising the introductory text, clause date, and paragraph (f)(2) read as follows:

§ 952.231–71 Insurance-litigation and claims.

As prescribed in 931.205–19(f), insert the following clause in applicable non-management and operating contracts:

Insurance—Litigation and Claims (XXX 20XX)

* * * * *

(f) * * *

(2) The term ''contractor's managerial personnel'' is defined in the Property clause

48 CFR 970.5245–1 in this contract.

* * * * *

■ 165. Section 952.232–7 is added to read as follows:

§ 952.232–7 Electronic submission of invoices/vouchers.

As prescribed at 932.971, insert the following clause:

Electronic Submission of Invoices/ Vouchers (XXX 20XX)

Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning contractor enrollment and use of VIPERS can be found at *https://vipers.doe.gov.*

(End of clause)

■ 166. Section 952.233–2 is revised to read as follows:

§ 952.233–2 Service of protest.

As prescribed in 933.106, insert the following provision:

Service of Protest (XXX 20XX)

(c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC–61), 1000 Independence Avenue SW, Washington, DC 20585, or email: *gaobidprotest@hq.doe.gov.*

(d) *Notice of Protest File Availability.* (1) If a protest of this procurement is filed with the GAO in accordance with 4 CFR part 21, any actual or prospective offeror may request the Department of Energy (DOE) to provide it with reasonable access to the protest file pursuant to 48 CFR 33.104(a)(3)(ii). Such request must be in writing and addressed to the Contracting Officer for this procurement.

(2) Any offeror who submits information or documents to DOE for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). DOE will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies (see 10 CFR part 1004).

(e) *Protests to the Agency.* The DOE's agency protest procedures are in 48 CFR 933.103. Potential protesters should discuss their concerns with the Contracting Officer prior to filing a protest. In the event that an interested party believes a protest is necessary, efforts should be made to resolve the protest at the lowest level possible.

(End of provision)

§ 952.233–4 and 952.233–5 [Removed]

■ 167. Sections 952.233–4 and 952.233–5 are removed.

■ 168. Section 952.242–71 is added to read as follows:

§ 952.242–71 Conditional payment of fee, profit, and other incentives.

As prescribed at 923.7003(f) and 942.71(d), insert the following clause: (Note: If the clause at 952.204–2, Security Requirements, is not included in the contract, the security or safeguarding of Restricted Data and other classified information requirements of the clause do not apply; if the clause at 952.250–70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health requirements of the clause do not apply.)

Conditional Payment of Fee, Profit, and Other Incentives (XXX 20XX)

(a) *Definitions.*

(1) *Amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period* means the quantity the Contracting Officer or fee determining official determines the Contractor is due for its performance prior to a separate determination that the Contractor did not comply with a term or condition of the contract or experienced a failure relating to: environment, safety, and health; security or safeguarding of Restricted Data and other classified information; or business and financial systems.

(i) If the contract includes incentives allocable to more than one period, the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period includes the allocable amount of payment for each such incentive for otherwise earned fee, fixed fee, profit, or other incentives. Unless stated otherwise, the allocable amount is the total amount divided by the number of periods the incentive covered.

(2) *Amount actually payable to the Contractor for a period* means: (the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period) less (the amount of any reduction under this clause and the amount of any reductions under other clauses to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period).

(b) *General.*

(1) (Note: If the clause at 48 CFR 952.204–2, Security Requirements, is not included in this contract, the security or safeguarding of Restricted Data and other classified information requirements of this clause do not apply; if the clause at 48 CFR 952.250–70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health requirements of this clause do not apply.)

The amount of payment of otherwise earned fee, fixed fee, profit, or other incentives for any period under this contract is dependent upon the Contractor's and the Contractor's employees' compliance during the period with the performance requirements of this contract relating to:

(i) environment, safety and health (ES&H), which includes worker safety and health (WS&H);

(ii) security or safeguarding of Restricted Data and other classified information; and

(iii) business and financial systems.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including in some cases a DOE approved contractor (Integrated Safety Management System (ISMS) or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The security or safeguarding of Restricted Data and other classified information performance requirements of this contract are set forth in the clause of this contract entitled, ''Security requirements,'' the clause (if it is included) of this contract entitled ''Laws, Regulations, and DOE Directives,'' and in other terms and conditions.

(4) The business and financial systems performance requirements of this contract are set forth in various terms and conditions relating to management, accounting, property, procurement, and earned value management, such as, the ''Management controls'' clause (if it is included).

(5) If the Contractor does not, in any period, meet the performance requirements of this contract relating to ES&H, security or the safeguarding of Restricted Data and other classified information, or business and financial systems, the Contracting Officer may, per this clause, reduce the amount of payment of otherwise earned fee, fixed fee, profit or other incentives.

(c) *Amount of Reduction.*

(1) If in any period (see paragraph (c)(5) of this clause) the Contractor does not meet the performance requirements of this contract relating to ES&H, security or the safeguarding of Restricted Data and other classified information, or business and financial systems, the Contracting Officer will unilaterally determine the amount of reduction to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period based on the severity of the performance failure pursuant to the degrees of failure specified in paragraphs (e), (f), and (g) of this clause. The percent reduction for each performance failure will be: not less than 26% nor more than 100% for a first degree failure; not less than 11% nor more than 26% for a second degree failure; and no more than 11% for a third degree failure.

(2) For a reduction allocable to more than one period, the Government will make the allocation at the end of the period in which it determines the total amount of the reduction. Unless stated otherwise, the allocable amount is the total reduction amount divided by the number of periods the reduction covered.

(3) The Government will reduce the payment of otherwise earned fee, fixed fee, profit, or other incentives as soon as practicable after the end of the period in which the performance failure occurs. If the Government is not aware of the failure when it occurs, it will make the reduction as soon as practical after becoming aware.

(4) In determining the reduction to the amount of payment and the applicability of mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H, security or safeguarding of Restricted Data and other classified information, or business and financial systems performance requirements of the contract. Such consideration must include performance against any specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the reduction that would be appropriate absent mitigating factors. Mitigating factors include, but are not limited to, the following (paragraphs (c)(4)(v), (vi), (vii) and (viii) of this clause apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor's self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; safeguarding Restricted

Data and other classified information and compliance in related areas; and business and financial systems and compliance in related areas.

(v) Contractor's demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced.

(vi) Event caused by ''Good Samaritan'' act by the Contractor (*e.g.,* offsite emergency response).

(vii) Contractor's demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.,* policy, ES&H programs).

(viii) Contractor's demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(5) The Contracting Officer will, for purposes of this clause, at the time of contract award or as soon as possible after contract award, allocate the total amount of fee, profit, and other incentives that is available under the contract to equal periods of [insert 6 or 12] months to run sequentially for the term of the contract, including options. The amount to be allocated to each period shall equal: (the average monthly amount available during the term of the contact) multiplied by (the number of months for each period).

(d) *Reductions to the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives under this and other clauses.*

(1) The amount of the reduction under this clause, in combination with the amount of any reduction under any other clause, shall not exceed the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period.

(2) If at any time during the contract any reductions under this clause or other clauses result in the sum of the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives to exceed the sum of the amounts of actually payable to the Contractor, the Contractor shall immediately return the excess to the Government.

(3) At the end of the contract—

(i) The Government will pay the Contractor the amount by which the sum of amounts actually payable to the Contractor exceeds the sum of the payments the Contractor has received; or

(ii) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of the amounts actually payable to the Contractor.

(e) *Environment, Safety and Health (ES&H).* Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including applicable ES&H laws, regulations, DOE directives, and DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or other incentives will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. They include:

(i) Failure to develop and obtain required DOE approval of an ISMS, if an ISMS is required.

(The Government will perform necessary reviews in a timely manner and not unreasonably withhold approval.)

(ii) Performance failures determined, per applicable ES&H laws, regulations, or DOE directives to have resulted in, or that could reasonably be expected to result in, serious injury or death to a worker.

(iii) Occurrence of any accident or event that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) and results in a determination to conduct a Federal Accident Investigation Board.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include:

(i) Failures to comply with an approved ISMS, if an ISMS is required.

(ii) Failures that have been determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or could reasonably be expected to result in, an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences.

(iii) A breakdown of the Integrated Safety Management System.

(iv) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in an accident that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) but not resulting in a determination to conduct a Federal Accident Investigation Board.

(v) Non-compliance with applicable ES&H laws, regulations, or DOE directives that results in a near miss of an accident or event that could have resulted in an adverse effect and a determination to conduct a Federal Accident Investigation Board. (A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, that does not result in an adverse effect.)

(3) Third Degree: Performance failures that have been determined per applicable ES&H laws, regulations, or DOE directives to reflect a lack of focus on improving ES&H. They include:

(i) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in potential breakdown of the Integrated Safety Management System. The following performance failures or performance failures of similar import will be considered third degree:

(A) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through external (*e.g.,* Federal) oversight and/or reported per DOE Order 231.B (or successor Order) requirements; internal oversight of 10 CFR parts 830, 835, 850, and 851; or DOE Orders 227.1A and 436.1 (or successor Order) requirements.

(B) Multiple similar non-compliances identified by external (*e.g.,* Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(C) Non-compliances that: have, or that may have, significant negative impacts to the worker, the public, or the environment; or indicate a significant programmatic breakdown.

(D) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(f) *Security or Safeguarding Restricted Data and Other Classified Information.* Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or other incentives occur will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program

(SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information regardless of classification (except for information covered by paragraph (f)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. This category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions that if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures that unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(g) *Business and Financial systems.* Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to business and financial systems. The degrees of performance failure under which reductions of fee, profit, or other incentives will be determined are as follows:

(1) First Degree: A performance failure that poses significant adverse long-term practical consequences to the mission of the site is a first-degree performance failure.

(2) Second Degree: A performance failure that poses measurable, but less than significant, adverse long-term practical consequences to the mission of the site is a second-degree performance failure.

(3) Third Degree: A performance failure that results in minor adverse long-term practical consequences to the mission of the site is a third degree performance failure.

(End of clause)

■ 169. Section 952.245–2 is revised to read as follows:

§ 952.245–2 Government property (fixed-price contracts).

Modify FAR 52.245–2 by adding ''and the DOE Acquisition Regulation subpart 945.5,'' at the end of paragraph (d) of the clause.

■ 170. Section 952.245–5 is revised to read as follows:

§ 952.245–5 Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).

Modify FAR 52.245–1 by adding ''and DOE Acquisition Regulation subpart 945.5'' at the end of the first sentence in paragraphs (e)(1) and (2) of the clause.

■ 171. Section 952.250–70 is revised to read as follows:

§ 952.250–70 Nuclear hazards indemnity agreement.

Insert the following clause in accordance with 950.7006:

Nuclear Hazards Indemnity Agreement (XXX 20XX)

(a) *Definitions.* Except as otherwise specified within this clause, all definitions set forth in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

''Extraordinary nuclear occurrence'' means an event that DOE has determined to be such an occurrence, as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

''Public liability,'' as defined in the Act, means liability that arises out of or in connection with the activities under this contract, including transportation; and arises out of or results from a nuclear incident or precautionary evacuation.

(b) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Act.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public

liability, as described in paragraph (a) of this clause. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in paragraph (a) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170t of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(e)(1) *Waiver of defenses.* In the event of a nuclear incident (as defined in the Act) arising out of nuclear waste activities (as defined in the Act), the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence that—

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by- product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive—

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to negligence, contributory negligence, assumption of risk; or

(B) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God; any issue or defense as to charitable or governmental immunity; and any issue or defense based on any statute of limitations, if suit is instituted within three years of the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) For the purposes of making a determination of whether or not there has been an extraordinary nuclear occurrence, ''offsite,'' as used in 10 CFR part 840, means ''away from the contract location,'' a phrase that means any DOE facility, installation, or site at which the contract is being performed, or any contractor-owned or -controlled facility, installation, or site at which the Contractor is engaged in performing the contract.

(3) The waivers set forth in paragraph (e)(1) of this clause—

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to any injury or damage to a claimant (or his property) that is intentionally sustained by the claimant, or that results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (a) of this clause. Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to:

(1) Require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

(2) Appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that this clause is subject to the clauses at 48 CFR 52.203–5, Covenant Against Contingent Fees, and 48 CFR 970.5232–3, Accounts, Records, and Inspection, and any provisions later added to this contract, as required by applicable Federal law, including statutes, Executive orders and regulations, to be

included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders, and pursuant to section 234C of the Act, for violations of applicable DOE worker safety and health related rules, regulations, and orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willfully violating the Act, and applicable DOE nuclear safety-related rules, regulations or orders for which violation results in, or if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in Subcontracts.* The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) of this clause. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective Date

( ) See note II below for instructions related to this section on Effective Date.

Relationship to General Indemnity

( ) See note III below for instructions related to this section on Relationship to General Indemnity.

(End of clause)

Note I

(1) For contracts with an award date after August 16, 2012, do not include an effective date provision.

(2) For contracts with an award date before August 16, 2012—

(i) If the contract contains the Nuclear Hazards Indemnity Agreement clause (June 1996 or prior version), replace the clause at 48 CFR 952.250–70 with this clause and use the EFFECTIVE DATE title and language, as follows:

''Effective Date. This contract was awarded on or after August 8, 2005, and at contract award contained the clause at 48 CFR 952.250–70 (JUN 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, controls the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

(ii) If the contract was awarded prior to August 8, 2005, and contains the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, add this clause in addition to the clause at 48 CFR 952.250–70 or prior version and use the EFFECTIVE DATE title and language, as follows:

''Effective Date. This contract was in effect prior to August 8, 2005, and contains the clause at 48 CFR 952.250–70 (JUN 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005.

The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

Note II

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 48 CFR 950.7101. Caution: Be aware that for contracts that will have this provision added, but that do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

''( ) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.''

(End of note)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 172. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

■ 173. Amend section 970.0100 by adding a sentence at the end of the section to read as follows:

§ 970.0100 Scope of part.

* * * This part does not apply to contracts not designated as M&O contracts by the Secretary of Energy, except as approved by the cognizant Senior Procurement Executive (SPE) or as otherwise prescribed in the DEAR.

■ 174. Amend section 970.0371–8 by revising paragraph (a)(1) to read as follows:

§ 970.0371–8 Employee disclosure concerning other employment services.

(a) * * *

(1) Acknowledge that the employee has read and is familiar with:

(i) The requirements and restrictions prescribed in this section;

(ii) Current version of DOE Order 486.1, Department of Energy Foreign Government Sponsored or Affiliated Activities;

(iii) Current version of DOE Order 241.1, Scientific and Technical Information Management; and

(iv) The requirements of the contractor's contract with DOE relating to patents.

* * * * *

■ 175. Section 970.0371–9 is amended by revising the last sentence of the section to read as follows:

§ 970.0371–9 Contract clause.

* * * In paragraph (a), the words ''and managerial personnel (see 970.5245–1(k))'' may be inserted after ''(see 952.215–70)''.

§ 970.0404–1 [Removed]

■ 176. Section 970.0404–1 is removed.

■ 177. Section 970.0404–2 is revised to read as follows:

§ 970.0404–2 General.

(a) DOE policies, definitions, provisions, and clauses associated with safeguarding and security of classified information are in part 904.

(b) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive or designee, the clause at 970.5215–3, ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,'' implements the requirements of section

234B of the Atomic Energy Act (42 U.S.C. 2282b) that provide for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of classified information, including Restricted Data.

§ 970.0404–4 [Removed]

■ 178. Section 970.0404–4 is removed.

■ 179. Section 970.0407–1–3 is revised to read as follows:

§ 970.0407–1–3 Contract clause.

The contracting officer shall insert the clause at 970.5204–3, Access to and Ownership of Records, in management and operating contracts and other contracts that contain:

(a) The Integration of Environment, Safety, and Health into Work Planning and Execution clause located at either 952.223–71 or 970.5223–1; or

(b) The clause at 952.223–72, Radiation Protection and Nuclear Criticality.

■ 180. Section 970.0801–2 is revised to read as follows:

§ 970.0801–2 Policy.

The provisions of FAR subpart 8.1, 41 CFR chapter 102, and 41 CFR part 109–43 apply to DOE's management and operating contracts.

■ 181. Section 970.0905 is revised to read as follows:

§ 970.0905 Organizational and consultant conflicts of interest.

(a) The Department of Energy (DOE) requires all activities performed under M&O contracts to be conducted without conflict of interest at the organizational and individual level.

(b) Management and Operating (M&O) contractors shall develop, maintain and follow a policy on organizational and financial conflict of interest in accordance with the clause at 970.5209–70, Conflicts of Interest. The policy must be appropriate to the statement of work of the underlying contract to ensure that the contractor:

(1) Is not biased because of its financial, contractual, organizational, or other interests which relate to the work under the contract; and

(2) Does not obtain any unfair competitive advantage over other parties by virtue of its performance of the contract.

(c) The Contracting Officer shall ensure that M&O contractors adopt policies and procedures in the award of subcontracts that will protect against a biased work product and an unfair competitive advantage.

■ 182. Section 970.0906 is added to read as follows:

§ 970.0906 Contract clause.

The Contracting Officer shall insert the clause at 970.5209–70, Conflicts of Interest, in all M&O contracts.

■ 183. Section 970.1100–1 is revised to read as follows:

§ 970.1100–1 Performance-based contracting.

(a) Each management and operating (M&O) contract must contain a performance work statement that describes, in general terms, work planned and/or required to be performed and expectations in terms of outcome, results, or final work products, as opposed to methods, processes, or design.

(b) Contract performance requirements and expectations should be consistent with the Department's strategic planning goals and objectives, as made applicable to the site or facility through Departmental programmatic and financial planning processes. Measurable performance criteria, objective measures, and where appropriate, performance incentives, shall be structured to correspond to the performance requirements established in the statement of work and other documents used to establish work requirements.

§ 970.1100–2 [Removed]

■ 184. Section 970.1100–2 is removed.

■ 185. Subpart 970.15 is revised to read as follows:

Subpart 970.15—Contracting by Negotiation

Sec.

§ 970.1504 Contract pricing.

§ 970.1504–1 Price analysis.

§ 970.1504–1–1 Fees for management and operating contracts.

This subsection sets forth the Department's policies on fees for management and operating (M&O) contracts.

§ 970.1504–1–2 Fee policy.

(a) *Basic principles.* (1) M&O contracts are typically cost-reimbursement type contracts with incentive fees. An M&O contract, however, may be of any contract type or combination of types (for example, firm-fixed-price, cost-plus-award-fee, cost-plus-incentive-fee, multiple-incentive, etc.). Regardless of contract type, an M&O contract may contain work elements using different incentives.

(2) A cost-plus-fixed-fee contract shall only be used if approved in advance by the Senior Procurement Executive (SPE) or designee. The fee for a cost-plus-fixed-fee contract may not exceed the limits at FAR 15.404–4(c)(4)(i).

(3) A base fee amount may only be used if approved in advance by the SPE or designee.

(4) Incentive fees allocated to evaluation periods under cost-reimbursement type contracts should, to the greatest extent appropriate, be tied to a specific portion of the maximum total available fee.

(5) The maximum total available fee amount may not exceed the fee derived from this subsection unless approved in advance by the SPE or designee. A request to allow a higher fee must be in writing and must clearly explain why the situation merits consideration.

(i) Typically, only a situation where either unusually difficult objective performance incentives would be used or where successful performance would provide extraordinary value would merit consideration.

(ii) When a contract requires a contractor to use its own facilities, equipment, or other resources for contract performance (*e.g.,* when there is no letter-of-credit financing), consideration may be given, subject to approval by the SPE or designee, to allowing a maximum total available fee amount above the amount calculated by this subsection.

(6) Each M&O contract must set forth in the contract (or in a Performance Evaluation and Measurement Plan (PEMP) or similar document) the methods that will be used to rate the contractor's performance and to

determine the fee the contractor's performance will earn. The DOE Contracting Officer must ensure all important areas of contract performance are specified in the contract or in a PEMP (or similar document), even if such areas are not assigned a specific portion of the maximum total available fee the contractor might earn.

(i) An M&O contract is an ''incentive contract'' as that term is used in FAR subpart 16.4. FAR subpart 16.4 prohibits the use in a contract of other than cost incentives without also providing a cost incentive (or constraint).

(ii) Award fee not earned during the award fee cycle shall not be carried over to any future award fee cycle. Consequently—

(A) When the award fee cycle consists of one evaluation period, unearned award fee amounts may not be carried over from one evaluation period to the next.

(B) When the award fee cycle consists of two or more evaluation periods, at the sole discretion of the Contracting Officer, unearned award fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

(b) C*oordination requirements.* (1) Before issuing a competitive solicitation, the Head of the Contracting Activity (HCA) must coordinate the greatest maximum total available fee amount the HCA will accept with the SPE or designee. A competitive solicitation must identify the greatest maximum total available fee amount the Government will accept and may invite offerors to propose a lower fee amount.

(2) Before beginning to negotiate an extension to an existing contract, the HCA must coordinate the greatest maximum total available fee amount the HCA will accept and the maximum total available fee amount targeted for negotiation with the SPE or designee.

§ 970.1504–1–3 Fee determination.

(a) *General.* Determining the fee of an M&O contract requires considering the:

(1) Magnitude of the effort;

(2) Type of the effort;

(3) Nature, difficulty, complexity, and importance of the work; and

(4) Specific circumstances of the procurement.

(b) *Maximum total available fee amount for the contract, annual fee bases, and allocation of the maximum total available fee amount.* (1) Determining the maximum total available fee amount of an M&O contract, which is based upon the fee base (among other things) in each of the one-year periods of the M&O contract, is a separate action from allocating that amount to the evaluation periods of the contract, which is based upon what best motivates the M&O contractor's superior performance. The Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(2) The maximum total available fee amount in an M&O contract is the sum of the maximum total available fee amounts in the contract's one-year periods. (See 970.1504–1–4 for a complete explanation of the calculation of the maximum total available fee amount for a one-year period and an example.)

(3) The maximum total available fee amount for a one-year period is based on the fee base for that one-year period. The fee base is an estimate of the allowable costs (with some exclusions) for that one-year period.

(4) The fee base is a basic component of the fee schedules, which link the fee base to fee. A fundamental aspect of fee calculations is the amount of the fee base and the amount of fee in the fee schedules are annual amounts. Calculating the maximum total available fee amount for a one-year period starts with determining the fee base for the one-year period. Consequently, a contract's maximum total available fee amount is based on the contract's one-year periods and their fee bases.

(5) Usually (but not necessarily) once the maximum total available fee amount for a one-year period is calculated, it is allocated (that is, made available to be earned by the M&O contractor) to the same one-year period. Additionally, when a maximum total available fee amount is established for longer than a year, it is subject to adjustment in the event of a significant change (greater than plus or minus ten percent or a lessor percent if appropriate) to the budget or work scope.

(6) In summary, while the maximum total available fee amount for a one-year period is based on the fee base for the one-year period, the evaluation period in which the contractor may earn all or part of that fee need not be the same one-year period or even a single evaluation period. Usually, the length of an evaluation period is one year, mirroring the one-year period used in the calculation of the maximum total available fee amount for a one-year period. In fact, the SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may be occasions where after calculating the maximum total available fee amount for a year, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

(7) Before each year (or other appropriate period), at any time before the year (or period), including as early as the time of contract award, the Contracting Officer and M&O contractor will enter negotiations to establish the requirements for the year (or other appropriate period), including evaluation areas, individual requirements, and the maximum total available fee that the contractor can earn for its performance. If the parties cannot agree, the Contracting Officer will unilaterally establish the requirements and the maximum total available fee. The maximum total available fee allocated to an evaluation period must be apportioned among a base fee amount (which is usually zero) and a performance fee amount. The performance fee amount may consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both. Both performance fee components are ''incentives'' per FAR subpart 16.4 and both are performance based. The performance fee must be tied to objective measures to the maximum extent appropriate. Performance incentive fee is preferable to performance award fee because it uses objective performance requirements rather than subjective performance requirements. Performance fee that is award fee may be used when: objective measures are not feasible (that is, when it is not feasible to devise effective predetermined objective measures applicable to cost, technical performance, or schedule); and the likelihood of meeting acquisition objectives will be enhanced by using incentives that effectively motivate the contactor toward exceptional performance and provide the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved.

(8) Within the maximum total available fee, Contracting Officer may include a type of incentive fee component, often labeled ''performance based incentive (PBI),'' that includes a target fee for a target level of performance. Each PBI must be tied to a specific portion of the total available fee pool. PBIs may only be used when—

(i) A target level of performance can be established that the contractor can reasonably be expected to reach;

(ii) Factors likely to impede the target performance are clearly within the control of the contractor; and

(iii) The contract indicates clearly a level below which performance is not acceptable.

(c) *Determining the maximum total available fee for each one-year period of the contract.* (1) Determining the maximum total available fee for each one-year period of the contract is a function of the:

(i) Magnitude of the effort (reflected by the total fee base for the year; see 970.1504–1–5);

(ii) Type of the effort (reflected by the allocation of the total fee base to the three fee schedules—production, research and development, and environmental restoration; see 970.1504–1–6);

(iii) Nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors; see 970.1504–1–7); and

(iv) Specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors; see 970.1504–1–8).

(2) Calculating the maximum total available fee for a one-year period entails determining the total fee base for the year, allocating it to the fee schedules based on the type of effort, using the fee schedules to determine a fee subtotal for each type of effort, multiplying those fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (See 970.1504–1–4 for a complete explanation and an example.)

(d) *Conditional payment of fee, profit, and other incentives.* (1) In addition to other performance requirements specified in their contracts, M&O contractors are subject to performance requirements relating to: environment, safety, and health (ES&H), including worker safety and health (WS&H); safeguarding of Restricted Data and other classified information; and business and financial systems. Performance requirements relating to ES&H will be set forth in the contract's ES&H terms and conditions, including a DOE-approved Integrated Safety Management System (ISMS), or similar document. Performance requirements relating to the safeguarding of Restricted Data and other classified information will be set forth in the clauses of the contract at 952.204–2, ''Security Requirements,'' and 970.5204–2, ''Laws, Regulations, and DOE Directives,'' as well as in other terms and conditions that prescribe requirements for the safeguarding of Restricted Data and other classified information. (If the contract does not include the clause at 952.204–2, ''Security Requirements,'' the safeguarding of Restricted Data and other classified information requirements of the clause at 970.5215–3, ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,'' do not apply.) Performance requirements relating to business and financial systems are set forth in the contract's various terms and conditions relating to management, accounting, property, and procurement.

(2) If the contractor does not meet the performance requirements of the contract relating to ES&H, to the safeguarding of Restricted Data and other classified information, or to business and financial systems, otherwise earned fee, fixed fee, profit, or other incentives may be unilaterally reduced by the Contracting Officer in accordance with the clause at 970.5215–3, ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.''

(3) The clause at 970.5215–3, entitled ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,'' provides for reductions of earned fee, fixed fee, profit, or other incentives under the contract depending upon the severity of the contractor's performance failure relating to ES&H requirements, relating to the safeguarding of Restricted Data and other classified information, and relating to business and financial systems. When reviewing performance failures that would otherwise warrant a reduction of earned fee, fixed fee, profit, or other incentives, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are included in the clause.

(4) The Contracting Officer must obtain the concurrence of the cognizant Program Secretarial Officer—

(i) Prior to effecting any reduction; and

(ii) Prior to determining that a reduction is not warranted for a particular performance failure or a group of performance failures.

(5) The Contracting Officer must coordinate with the Office of Enforcement within the Office of Enterprise Assessments (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any DOE regulation relating to worker safety and health concerns. See 970.2303–2–70.

(e) *Types of contracts and fee arrangements.* (1) Contracts that are a combination of types or include work elements with fee arrangements that are a combination of contract types must—

(i) Conform to the requirements of parts 915 and 916 and FAR parts 15 and 16; and

(ii) Where appropriate to the type, be supported by:

(A) Negotiated costs subject to the requirements of the 41 U.S.C. chapter 35;

(B) A pre-negotiation memorandum; and

(C) A plan describing how each contract type or fee arrangement will be administered.

(2) [Reserved]

(f) *Establishing contract type.* Operations and field offices shall take the lead in establishing the most appropriate contract type for their requirements. Before establishing contract types and fee arrangements, operations and field offices must ensure the necessary resources exist within the contractor's and the Government's organizations to administer them.

§ 970.1504–1–4 Calculating the maximum total available fee amount for a one-year period.

(a) The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods. The maximum total available fee amount in a one-year period is based on the fee base of the one-year period. Calculating the maximum total available fee amount for a one-year period requires considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors).

(b) To calculate the maximum total available fee amount for a year, the Contracting Officer takes the following steps:

(1) *Step 1.* Determines the total fee base for the year (see 970.1504–1–5);

(2) *Step 2* Allocates the total fee base for the year as appropriate to the three types of efforts reflected by the three fee schedules (if there is only one type of effort, all of the total fee base is allocated to the fee schedule appropriate for the effort);

(3) *Step 3.* Using the portion of the total fee base allocated to the schedule in paragraph (b)(2) of this section (step

2), determines a fee subtotal for each type of effort (see 970.1504–1–6);

(4) *Step 4.* Multiplies each of the fee subtotals in paragraph (b)(3) of this section (step 3) by the appropriate classification factor (see 970.1504–1–7);

(5) *Step 5.* Multiplies each of the products produced in paragraph (b)(4) of this section (step 4) by the appropriate percentage, which is determined by considering the significant factors (see 970.1504–1–8); and

(6) *Step 6.* Adds the products of paragraph (b)(5) of this section (step 5).

(c) An example of calculating the maximum total available fee for a one-year period follows in paragraphs (c)(1) through (6) of this section. The assumptions are: total fee base is 50,000,000 (comprising 10,000,000 of Production efforts, 15,000,000 of Research and Development (R&D) efforts, and 25,000,000 of Environmental Management (EM) efforts), classification factors are 3.0, 1.5, and 2.0, and appropriate percentages are 90%, 85%, and 75%.

(1) *Step 1.* Determination of the total fee base: 50,000,000.

(2) *Step 2:* Allocation of the total fee base in paragraph (c)(1) of this section (step 1) to the three fee schedules (based on the types of effort in the total fee base):

(i) 10,000,000 to Production;

(ii) 15,000,000 to R&D; and

(iii) 25,000,000 to EM.

(3) *Step 3.* Determination of the fee subtotal for each type of effort using the applicable fee schedules:

(i) 578,726 for Production;

(ii) 957,250 for R&D; and

(iii) 1,236,340 for EM.

(4) *Step 4.* Multiplication of the fee subtotal in paragraph (c)(3) of this section (step 3) for each type of effort by the appropriate classification factor:

$578,726 \times 3.0 = 1,736,178$ for Production;

$957,250 \times 1.5 = 1,435,875$ for R&D; and

$1,236,340 \times 2.0 = 2,472,680$ for EM.

(5) *Step 5.* Multiplication of each of the products of paragraph (c)(4) of this section (step 4) by the appropriate percentage for the type of work (determined by considering the significant factors (see 970.1504–1–8)):

(i) $1,736,178 \times .9 = 1,562,560$ for Production;

(ii) $1,435,875 \times .85 = 1,220,494$ for R&D; and

(iii) $2,472,680 \times .75 = 1,854,510$ for EM.

(6) *Step 6.* Addition of the products of paragraph (c)(5) of this section (step 5):

1,562,560.

1,220,494.

1,854,510.

4,637,564.

(d) In summary, the maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods. Calculating the maximum total available fee amount for a one-year period entails determining the total fee base, allocating it to the fee schedules, using the fee schedules to determine fee subtotals, multiplying the fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (Allocating the amount of maximum total available fee for a one-year period to an evaluation period or periods is a separate action.)

§ 970.1504–1–5 Fee base.

(a) The total fee base for a one-year period (see step 1 located at 970.1504–1–4(b)(1)) is an estimate of the allowable costs for the one-year period, with some exclusions. (Estimates for Strategic Partnership Projects may be included in the total fee base, where appropriate.) The total fee base excludes estimates of allowable costs for: source and special nuclear materials; land, buildings, and facilities (whether they are to be leased, purchased or constructed); depreciation of Government facilities; and efforts for which a separate fee is to be negotiated.

(b) In addition to the exclusions in paragraph (a) of the section, the total fee base excludes:

(1) Any part of the estimated allowable cost of capital equipment that the contractor procures by subcontract and other similar costs that are of such magnitude or nature as to distort the technical and management effort required of the contractor;

(2) At least 20% of the estimated allowable cost of subcontracts and other major contractor procurements, with the excluded amount increasing as the contractor's estimated required management effort decreases;

(3) Estimates of allowable home office or corporate general and administrative expenses that will be reimbursed;

(4) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(5) Cost of rework attributable to the contractor; and

(6) State taxes.

(c) The total fee base does not reflect any fee or compensation for unusual architect-engineer or construction services provided by the M&O contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. The fees for such services shall be calculated per 915.404–4–71 and added to the fees calculated using the production, R&D, and EM schedules. The total fee base also does not reflect any fee or compensation for special equipment purchases. The fees for special equipment purchases shall be calculated per 915.404–4–71 and added to the fees calculated using the production, R&D, and EM schedules.

(d) No fee schedule may be used more than once in calculating the maximum total available fee amount for a one-year period.

§ 970.1504–1–6 Fee schedules.

(a) In calculating the amount of maximum total available fee amount for a one-year period (see 970.1504–1–4), once the total fee base for the year is determined it is allocated to one or more of the three fee schedules based upon the type of effort. The three types of efforts are: Production; R&D; and EM. Each fee schedule provides a fee subtotal (see steps 2 and 3 in 970.1504–1–4(b)(2) and (3)).

(b) The three schedules are:

TABLE 1 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	INCR. (percent)
PRODUCTION EFFORTS SCHEDULE			
Up to $1 Million	.....	.....	7.66
1,000,000	$76,580	7.66	6.78
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24

TABLE 1 TO PARAGRAPH (b)—Continued

Fee base (dollars)	Fee dollars	Fee (percent)	INCR. (percent)
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	.....
Over $500,000,000	6,097,956	.....	0.45

TABLE 2 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	INCR. (percent)
RESEARCH AND DEVELOPMENT EFFORTS SCHEDULE			
Up to $1 Million	.....	.....	8.42
1,000,000	$84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.58
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	.....
Over $500,000,000	7,172,264	.....	0.50

TABLE 3 TO PARAGRAPH (b)

Fee base (dollars)	Fee dollars	Fee (percent)	INCR. (percent)
ENVIRONMENTAL MANAGEMENT EFFORTS SCHEDULE			
Up to $1 Million	.....	.....	7.33
1,000,000	$73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,2197924	2.61	1.12
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55
1,000,000,000	10,786,788	1.08	.....
Over $1 Billion	10,786,788	.....	0.55

§ 970.1504–1–7 Classification factors.

(a) There are five classification factors. They are tied to facility/task categories. Step 4 in calculating the maximum total available fee amount for the one-year period (see 970.1504–1–4(b)(4)) is to multiply the fee subtotal in step 3 for each type of effort by the appropriate classification factor. The classification factors and their corresponding facility/task categories are:

TABLE 1 TO PARAGRAPH (a)

Facility/Task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.5
E	1.0

(b) The Contracting Officer shall select the Facility/Task Category after considering the following:

(1) *Facility/Task Category A.* The main focus of effort performed is related to—

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state-of-the-art technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly demanding when compared to similar industrial/DOE settings (*i.e.,* nuclear energy processing, industrial environmental cleanup);

(iii) Construction of facilities such as nuclear reactors, atomic particle accelerators, or complex laboratories or industrial units especially designed for handling radioactive materials;

(iv) R&D directly supporting paragraph (b)(1)(i), (ii), or (iii) of this subsection and not conducted in a DOE laboratory; or

(v) As designated by the SPE, or designee. (Classification factor 3.0)

(2) *Facility/Task Category B.* The main focus of effort performed is related to—

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals or other substances that pose a significant threat to the environment or the health and safety of workers or the public, if the nature of the work uses state-of-the-art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (*i.e.,* nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components;

(v) Construction of facilities involving operations requiring a high degree of design layout or process control;

(vi) R&D directly supporting paragraph (b)(2)(i), (ii), (iii), (iv), or (v) of this subsection and not conducted in a DOE laboratory; or

(vii) As designated by the SPE or designee. (Classification factor 2.5)

(3) *Facility/Task Category C.* The main focus of effort performed is related to—

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work uses routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (*i.e.,* nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material);

(iv) Construction of facilities involving operations requiring normal processes and operations; general or administrative service buildings; or routine infrastructure requirements;

(v) R&D directly supporting paragraph (b)(3)(i), (ii), (iii), or (iv) of this subsection and not conducted in a DOE laboratory; or

(vi) As designated by the SPE or designee. (Classification factor 2.0)

(4) *Facility/Task Category D.* The main focus of the effort performed is R&D conducted at a DOE laboratory. (Classification factor 1.5)

(5) *Facility/Task Category E.* Efforts performed using a fixed fee. (Classification factor 1.0) (c) Where the SPE or designee has approved a base fee, the Classification Factors shall be reduced, as approved by the SPE or designee.

(d) Any risks that are indemnified by the Government (for example, risks under the Price-Anderson Act) will not be considered as risks to the contractor.

§ 970.1504–1–8 Determining the appropriate percentage by considering the significant factors.

(a) In calculating the maximum total available fee for a one-year period (see 970.1504–1–4), step 5 (970.1504–1–4(b)(5)) is to consider the specific circumstances of the procurement using the following significant factors for each type of effort, determine the appropriate percentage for the type of work, and apply it to the subtotals of fee from step 4 (970.1504–1–4(b)(4)). An appropriate percentage of 100% would be applied to work of maximum difficulty and/or complexity; lesser percentages would be applied to work less difficult or complex. The significant factors are:

(1) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(2) Management risk relating to performance, including—

(i) Composite risk and complexity of principal work tasks required to do the job; and

(ii) Advance planning, forecasting and other such requirements;

(3) Size and operation (number of locations, plants, differing operations, etc.);

(4) The nature and relative complexity of subcontracted efforts, subcontractor management, and complexity of integration with other contractors;

(5) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.; and

(6) The presence or absence of financial risk, including the type and terms of the contract.

(b) [Reserved]

§ 970.1504–1–9 Adding the fee subtotals for a one-year period.

In calculating the maximum total available fee amount for a one-year period (see 970.1504–1–4), step 6 (970.1504–1–4(b)(6)) is to add the products of step 5 (970.1504–1–4(b)(5).

§ 970.1504–1–10 Allocating the maximum total available fee amount for a one-year period to one or more of the contract's evaluation periods.

Usually, the length of an evaluation period is one year, mirroring the one-year period used in calculating the maximum total available fee amount for a one-year period. The SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may

be occasions where after calculating the maximum total available fee amount for a one-year period, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

§ 970.1504–1–11 The maximum total available fee amount for a contract.

The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods.

§ 970.1504–2 Documentation.

§ 970.1504–2–1 Cost or pricing data.

(a) The certification requirements of FAR 15.406–2 are not applied to DOE cost- reimbursement M&O contracts.

(b) The Contracting Officer shall ensure that M&O contractors and their subcontractors obtain certified cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with FAR 15.406–2, if required by FAR 15.403–4, and incorporate appropriate contract provisions similar to those set forth at FAR 52.215–10 and 52.215–11 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at FAR 52.215–12 and 52.215–13 shall be included in M&O contracts.

§ 970.1504–3 Solicitation provision and contract clauses.

(a) The Contracting Officer shall insert the clause at 970.5215–1, Total Available Fee: Base Fee Amount and Performance Fee Amount, in M&O contracts.

(b) The Contracting Officer shall insert the clause at 970.5215–3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts, in M&O contracts. (Note: The clause states if the contract does not include the Security Requirements clause (952.204–2), the requirements of the clause related to security or safeguarding of Restricted Data and other classified information do not apply.)

(c) The Contracting Officer shall insert the provision at 970.5215–5, Limitation on Fee, in solicitations for M&O contracts.

§ 970.1504–4 Special cost or pricing areas.

§ 970.1504–4–1—970.1504–4–3 [Reserved]

■ 186. Amend section 970.1706–1 by revising paragraphs (a) and (b) to read as follows:

§ 970.1706–1 Award, renewal, and extension.

(a) *Contract term.* Effective performance under an M&O contract is facilitated by the use of a relatively long contract term. Only the Secretary can authorize the use of an M&O contract and only the Secretary can renew the original authorization of an M&O contract.

(1) An M&O contract shall—after the Secretary has authorized its original use (either by a competitive award or by a sole source award), its maximum term, and any other limits on its terms (options or other terms)—provide for a base term not to exceed the lessor of five years or the maximum term the Secretary authorized.

(2) The contract may include option terms provided no option term exceeds the lessor of five years or the maximum term the Secretary authorized (for options or the contract) and the sum of base term and the option terms does not exceed the lessor of 10 years or the maximum term the Secretary authorized for the contract. In addition to the base term and the option terms just described, an M&O contract for a national laboratory that is competitively awarded may provide for award term incentives provided none exceed the maximum term the Secretary authorized for each. The sum of base term, option terms, and award terms shall not exceed the lessor of 20 years or the maximum term the Secretary authorized for the contract.

(3) After the Secretary's original authorization of the use of the M&O contract has expired, any continuation of work under an M&O contract must be preceded by the Secretary's renewal of his/her authorization for use of an M&O contract. Whether work is to be continued by a competitive award to a new contractor or to the incumbent, by a sole source award to a new contractor, or by a sole source extension of the contract to the incumbent, the Secretary's renewal of his/her authorization for use of an M&O contract to perform the work is required before work may continue.

(4) In addition to requiring the Secretary's renewal of his/her authorization for use of an M&O contract, a sole source extension of an M&O contract to the incumbent must be justified under one of the statutory authorities listed in FAR 6.302 and authorized by the Secretary.

(5) The specific duration of the base term, option terms, and award terms of an M&O contract must be established concurrent with the Secretary's authorization (or renewal of his/her authorization) to use an M&O contract (for original use, sole source award to a new contractor, competitive award to a new contractor or to the incumbent, or sole source extension of the contract to the incumbent).

(b) *Exercise of option.* The contracting officer's decision to exercise an option (if the Secretary's authorization to use an M&O contract covers the option period) must be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). In deciding to exercise the option, the contracting officer shall:

(1) Consider the extent to which performance-based management contract provisions are present or can be negotiated into the contract.

(2) Make the determinations required by FAR 17.605 in the manner described therein. As part of the review required by FAR 17.605(b), the Contracting Officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the Contracting Officer's decision that the exercise of the option is in the Government's best interest. The Contracting Officer's decision shall be approved by the Senior Procurement Executive and the cognizant Assistant Secretary(s). The determinations described in FAR 17.207(d) and (e)(2) are not required, and because of the way in which the evaluation of cost to the Government is performed in the award of an M&O contract that includes options, the Contracting Officer need only determine the option was evaluated as part of the initial competition and contains a maximum fee. The Contracting Officer need not, for example: issue a new solicitation; informally analyze prices; or determine the option is the more advantageous offer.

* * * * *

■ 187. Section 970.1707–1 is revised to read as follows:

§ 970.1707–1 Scope.

Pursuant to 42 U.S.C. 2053 and 7259a, DOE is authorized to make its facilities available to other Federal and non-Federal entities (sponsors) for the conduct of certain research and development and training activities. Pursuant to 31 U.S.C. 1535 and 42 U.S.C. 7259a, or other applicable authority, other Federal entities may

request DOE to conduct work. DOE has implemented these and other statutory authorities and requirements in its Strategic Partnership Projects Program.

■ 188. Amend section 970.1707–3 by:
■ a. Revising paragraph (a);
■ b. Adding the word ''and'' at the end of paragraph (b)(2);
■ c. Removing paragraph (b)(3) and redesignating paragraph (b)(4) as paragraph (b)(3); and
■ d. Revising paragraph (c)(1).

The revisions read as follows:

§ 970.1707–3 Terms governing strategic partnership projects.

(a) DOE's internal review and approval procedural requirements for strategic partnership projects agreements are set forth in the current version of DOE Order 481.1, and such other guidance as may be issued by DOE.

* * * * *

(c) * * *

(1) The interagency agreement with DOE complies with the Economy Act of 1932 (31 U.S.C. 1535) or other applicable statutory authorities and FAR 6.002, which prohibits the use of an Interagency Agreement for the purpose of avoiding the competition requirements of the Federal Acquisition Regulation (48 CFR chapter 1); and

* * * * *

■ 189. Section 970.1707–4 is revised to read as follows:

§ 970.1707–4 Contract clause.

Insert the clause at 970.5217–1, Strategic Partnership Projects Program (Non-DOE Funded Work), in any contract that may involve work under the Strategic Partnership Projects Program.

■ 190. Sections 970.1708, 970.1708–1, 970.1708–2, and 970.1708–3 are added to read as follows:

Sec.
970.1708 Agreements for commercializing technology (ACT).
970.1708–1 Scope.
970.1708–2 General.
970.1708–3 Contract clause.

§ 970.1708 Agreements for commercializing technology (ACT).

§ 970.1708–1 Scope.

The scope of this subpart is to provide authorization for the M&O contractor to conduct third party-sponsored research at the M&O contractor's risk.

§ 970.1708–2 General.

M&O contractors may elect to enter into agreements directly with non-Federal sponsors to conduct research at the facility the M&O contractor is responsible for managing and operating so long as the work does not present, or minimizes, any apparent COI, as well as avoiding or neutralizing any actual COI as a result of the agreement. This research is conducted at the M&O contractor's risk and the M&O contractor may obtain compensation beyond full-cost recovery for accepting the risk of performance.

§ 970.1708–3 Contract clause.

The Contracting Officer shall insert the clause at 970.5217–2, Agreements for Commercializing Technology (ACT), in any contract that may involve ACT pursuant to 970.1708.

■ 191. Section 970.1907–8 is added to read as follows:

§ 970.1907–8 Contract clauses.

(a) In accordance with FAR 19.708(b)(1), the Contracting Officer shall insert the clause FAR 52.219–9, Small Business Subcontracting Plan, in all M&O solicitations and contracts.

(b) The Contracting Officer shall supplement the clause at FAR 52.219–9 with the clause at 970.5219, Small Business Subcontracting Plan, in M&O solicitations and contracts, except for those for the Ames Laboratory and Princeton Plasma Physics Laboratory. The Contracting Officer may tailor the clause as needed.

■ 192. Section 970.2201–1–1 is revised to read as follows:

§ 970.2201–1–1 General.

Contracting officers shall, in appropriate circumstances, follow the requirements in FAR subpart 22.1, as supplemented in this section, in the award and administration of:

(a) Management and operating (M&O) contracts;

(b) Contracts the Senior Procurement Executive designates; and

(c) Non-M&O contracts where the current contract's work was previously performed under an M&O contract and the current Contractor was required to, and did, employ the former Contractor's legacy workforce. These non-M&O contracts may include, but are not limited to, contracts whose work is for:

(1) Environmental remediation;

(2) Decontamination and decommissioning;

(3) Environmental restoration;

(4) Infrastructure services for the site;

(5) Site closure at a current or former M&O contract site or facility; or

(6) Protective forces that provide physical security of sites at a current of former M&O contract site or facility.

■ 193. Section 970.2201–1–2 is revised to read as follows:

§ 970.2201–1–2 Policies.

(a) The extent of Government ownership of the nation's energy plant and materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the energy program. Such special conditions include the need for continuity of vital operations at DOE installations; retention by DOE of absolute authority on all questions of security in accordance with 10 CFR 706.40; and DOE review of labor expenses under management and operating (M&O) contracts (and certain other contracts) to assure judicious expenditure of public funds. It is the intent of DOE that personnel and labor policies throughout the energy program reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations that are essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) M&O contractors (and certain other non-M&O contractors and subcontractors as described in 970.2201–1–1) are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, age, disability, or national origin. Contractors are required to take affirmative action to achieve these objectives as required by, among other things, the clause at FAR 52.222–26.

(ii) When the clause at 952.204–2, Security Requirements, is applicable (see 904.404), the Contracting Officer will obtain adequate assurance that the Contractor performed the required review of an uncleared applicant's or of an uncleared employee's background in its determination to select an individual for a position requiring a DOE access authorization.

(2) *Security.* In accordance with 10 CFR 706.40, on all matters of security at its facilities, DOE retains absolute authority. Neither the regulations or policies pertaining to security, nor their administration, are matters for collective bargaining between the contractor's management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of the contractor's management and labor when

formulating security regulations and policies that may affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits.* The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between contractor management and employee representatives with maximum possible freedom from Government interference and consistent with 970.2201–1–2(a)(5) and 970.2201–1–4.

(4) *Employee relations.* The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining.* (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices (which experience has shown) that are fundamental to the equitable resolution of disputes, and promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to if not found to be otherwise clearly warranted.

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For purposes of this paragraph (a)(5)(ii), each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the collective bargaining agreement.

(iii) DOE expects its management and operating contractors and the unions representing the contractor's employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training.* DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions.* Accident, fire, health, and occupational hazards associated with DOE activities should be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. Subject to DOE control, to the extent set forth in the terms and conditions of the contract, contractors are required to:

(i) Maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations.

(ii) Provide appropriate financial protection in case of occupational disability to employees.

(b) Title to payroll and associated records under certain contracts (see 970.0407–1–2) for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with the clause at 970.5232–3, Accounts, Records, and Inspection, and other DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act are satisfied by disposal of such records in accordance with applicable DOE directives.

■ 194. Section 970.2201–1–3 is revised to read as follows:

§ 970.2201–1–3 Contract clause.

In addition to the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, the contracting officer shall insert the clause at 970.5222–1, Collective Bargaining Agreements—Management and Operating Contracts, in all M&O contracts and certain other non-M&O contracts as described in 970.2201–1–1. The substance of the clause at 970.5222–1, Collective Bargaining Agreements, shall be included in any subcontract for protective services or other services performed on the DOE-owned site which will affect the continuity of operations of the facility.

■ 195. Section 970.2201–1–4 is added to read as follows:

§ 970.2201–1–4 Wages, salaries, and employee benefits.

(a) It is DOE policy that contractors facilitate the retention of certain critically skilled employees for: the management and operation of laboratories and other national defense and security site facilities; contracts designated by the Senior Procurement Executive; and certain other non-M&O contracts as described in 970.2201–1. Critically skilled employees are those employees whose specific recognized technical skills, knowledge, and experience in a specific field are critical to the operations or strategy of a contractor, and whose loss from the DOE contractor's workforce system would cause a significant negative impact on achieving and supporting national research, environmental, defense, and security objectives.

(b) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt the normal practices and conditions of industry or institutions of higher education to the contract work, and to provide for appropriate review by DOE.

(c) The contractor's compensation systems and supporting policies should support the effective recruitment and retention of a highly skilled, motivated, and experienced workforce at a reasonable cost. For a cost to be allowable it must comply with each of the five requirements for allowability stated in FAR 31.201–2. Some of the specific details of the allowable costs for compensation for personal services are discussed at FAR 31.205–6, as supplemented by, 970.3102–05–6, and other pertinent parts of the DEAR and DOE directives and policies.

■ 196. Section 970.2204 is revised to read as follows:

§ 970.2204 Labor standards for contracts involving construction.

The policy in 922.406–1 applies to M&O contracts.

§ 970.2204–1 and 970.2204–1–1 [Removed]

■ 197. Sections 970.2204–1 and 970.2204–1–1 are removed.

■ 198. Section 970.2210 is revised to read as follows:

§ 970.2210 Service contract labor standards.

The Service Contract Labor Standards, historically referred to as the Service Contract Act of 1965, is not applicable to contracts for the management and operation of DOE facilities, but it is applicable to subcontracts under such contracts (see 970.5244–1(x)).

■ 199. Section 970.2270 is revised to read as follows:

§ 970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. These claims are payable by employers through the state unemployment

insurance tax. Some entities such as nonprofits may be permitted to either pay in or opt out. These claims are payable either through the state unemployment insurance tax (pay in) or by reimbursing the state for actual claims paid out to former employees (opt out).

(b) The predictability of paying claims through the state unemployment insurance tax is preferred and highly encouraged. However, an M&O contractor may choose to opt out. A contractor before deciding to opt out, generally performs an analysis of its workforce including size and stability of the workforce, historical turnover rate and historical payout data. This information may also be provided to state regulators who are interested in ensuring that employers who opt out establish an adequate reserve fund to reimburse the state for the claims that are processed for the company's former employees.

(c) When an M&O contractor opts out of paying for claims through the state's unemployment insurance tax, as permitted and in accordance with state laws, regulations and guidelines, the reimbursement by DOE, in any given year, should generally be limited to the actual incurred cost, but no more than what would have been incurred had the contractor chosen to pay in.

■ 200. Section 970.2270–2 is added to read as follows:

§ 970.2270–2 Contract clause.

The Contracting Officer shall insert the clause at 970.5222–4, Unemployment Compensation, in all solicitations for an M&O contract and in all M&O contracts awarded to a nonprofit entity. When this is included in a contract or solicitation, the Contracting Officer shall fill in the appropriate number of calendar days.

§ 970.2301–1 [Removed and Reserved]

■ 201. Section 970.2301–1 is removed and reserved.

■ 202. Section 970.2301–2 is revised to read as follows:

§ 970.2301–2 Contract clauses.

The Contracting Officer shall insert the clause at 952.223–78, Sustainable Acquisition Requirements, in all management and operating (M&O) contracts in accordance with 923.172.

§ 970.2303–2–70 [Amended]

■ 203. Amend section 970.2303–2–70 in paragraph (c)(2)(ii) by removing the text ''the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Health, Safety and Security'' and adding in its place ''the Office of Enforcement within the Office of Enterprise Assessments''.

■ 204. Section 970.2672–3 is revised to read as follows:

§ 970.2672–3 Contract clause.

The contracting officer shall insert the clause at 970.5226–2, Workforce Restructuring under section 3161 of the National Defense Authorization Act for Fiscal Year 1993, in contracts for the management and operation of Department of Energy Defense Nuclear Facilities and, as appropriate, in other contracts that include site management responsibilities at a Department of Energy Defense Nuclear Facility. The contracting officer shall insert the clause at 952.226–74, Workforce Restructuring and Displaced Employee Hiring Preference, in contracts and subcontracts at any tier (except for contracts for commercial items, pursuant to 41 U.S.C. 403) which exceed $500,000 in value.

■ 205. Section 970.2673–2 is revised to read as follows:

§ 970.2673–2 Contract clause.

The contracting officer may insert the clause at 970.5226–3, Community Commitment, in management and operating contracts where community involvement will be required of the contractor.

■ 206. Section 970.2701–1 is revised to read as follows:

§ 970.2701–1 Applicability.

This subpart applies to negotiation of patent rights, rights in technical data provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's major sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing activities conducted at a DOE site, including decontamination and decommissioning activities.

■ 207. Section 970.2702 is revised to read as follows:

§ 970.2702 Patent and copyrights.

§ 970.2702–1 through 970.2702–6 [Removed]

■ 208. Sections 970.2702–1 through 970.2702–6 are removed.

■ 209. Section 970.2702–1–2 is added to read as follows:

§ 970.2702–1–2 Solicitation provision and contract clauses.

(a) *Authorization and consent.* Contracting officers must include the clause at 970.5227–4, Authorization and Consent, instead of the clause at FAR 52.227–1.

(b) *Notice and assistance regarding patent and copyright infringement.* Contracting Officers must include the clause at 970.5227–5, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at FAR 52.227–2.

(c) *Patent indemnity.* (1) Contracting Officers must include the clause at 970.5227–6, Patent Indemnity-Subcontracts, to assure that subcontracts appropriately address patent indemnity.

(2) Normally, the clause at FAR 52.227–3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the Contracting Officer must consult with DOE patent counsel and use the clause where appropriate.

(d) *Rights to proposal data.* Contracting Officers must include the clause at FAR 52.227–23, Rights to Proposal Data (Technical), in all solicitations and contracts for the management and operation of DOE sites and facilities.

(e) *Notice of right to request patent waiver.* Contracting Officers must include the provision at 970.5227–9 in all solicitations for contracts for the management and operation of DOE sites or facilities.

(f) *Royalties.* Contracting Officers must include the solicitation provision at 970.5227–7, Royalty Information, and the clause at 970.5227–8, Refund of Royalties, instead of the provision at FAR 52.227–6 and the clause at FAR 52.227–9, respectively.

§ 970.2703–1 [Amended]

■ 210. Amend section 970.2703–1 by:

■ a. Removing paragraph (b); and

■ b. Redesignating paragraph (c) as paragraph (b).

■ 211. Amend section 970.2703–2 by revising paragraphs (a), (b), and (c) and adding paragraph (h) to read as follows:

§ 970.2703–2 Patent rights clause provisions for management and operating contractors.

(a) *Allocation of principal rights: Bayh-Dole provisions.* (1) If the M&O contractor is a nonprofit organization or small business firm as defined by 35 U.S.C. 201, the clause at 970.5227–10 must be inserted into the M&O contract, except when the M&O contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs. The patent rights clause at 970.5227–10 allows the contractor to elect to retain title to inventions conceived or first actually reduced to practice in performance of work under the contract in accordance with 35 U.S.C. 200 *et seq.* (the Bayh-Dole Act).

(2) If the M&O contractor is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract in accordance with the Bayh-Dole Act, DOE may modify the clause at 970.5227–10 to address issues such as the disposition of royalties earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

(b) *Allocation of principal rights: Government title.* (1) The clause at 970.5227–11 must be incorporated into the M&O contract:

(i) For any the M&O contractor that does not qualify as a nonprofit organization or small business firm as defined by 35 U.S.C. 201 and for which DOE has not granted a patent waiver pursuant to 10 CFR part 784; or

(ii) If, without regard to the type of contractor, the M&O contract is for the operation of a DOE facility primarily dedicated to naval nuclear propulsion or weapons related programs.

(2) The clause at 970.5227–11 requires the contractor to assign the Government title to inventions conceived or first actually reduced to practice in the course of or under an M&O contract in accordance with 42 U.S.C. 2182 and 5908 (the Atomic Energy of 1954 and the Federal Nonnuclear Energy Act of 1974).

(c) *Allocation of principal rights: Contractor right to elect title under a patent waiver.* DOE may grant a patent waiver for an M&O contractor that does not qualify as a nonprofit organization or a small business firm pursuant to 10 CFR part 784. The patent waiver would allow the contractor to elect to retain title to inventions made in the course of or under the M&O contract. When a patent waiver is granted that covers the M&O contractor, the clause at 970.5227–12 must be inserted into the M&O contract, instead of using the clause at 970.5227–11. The clause at 970.5227–12 may be modified by applicable patent. If the M&O contractor is conducting privately funded technology transfer activities, involving the use of private funds to conduct licensing and marketing activities related to inventions made under the contract, DOE may modify the patent rights clause to address issues such as the disposition of royalties earned under the privately funded technology transfer program, the transfer of patent rights to a successor contractor, allowable cost restrictions concerning privately funded technology transfer activities, and the Government's freedom from any liability related to licensing under the contractor's privately funded technology transfer program.

* * * * *

(h) *Allocation of principal rights: Subcontractor rights to elect title under Bayh-Dole provisions.* When the M&O contractor is issuing a subcontract to a nonprofit organization or small business firm as defined by 35 U.S.C. 201, the subcontractor retains all rights provided in the patent rights clause at 37 CFR 401.3(a) and 401.14 and adding Alternate I of FAR 52.227–11, Patent Rights-Retention by the Contractor, that includes the agency implementing regulations specific for DOE. If the S&E DEC, or any other applicable DEC, is applicable, the Contractor shall include Alternate II of 952.227–11, Patent Rights-Retention by the Contractor. Alternate II modifies 37 CFR 401.14 to:

(1) Reflect DOE required subcontracting instructions pursuant to 37 CFR 401.5(a) as well as the deletion of the definition of contractor that does not apply based on the subcontracting instructions; and

(2) Include the U.S. competitiveness provision in paragraph (m) of the clause pursuant to the Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021.

■ 212. Amend section 970.2704–2 by revising paragraphs (a), (c)(2), and (e) to read as follows:

§ 970.2704–2 Procedures.

(a) The clauses at 970.5227–1, Rights in Data—Facilities, and 970.5227–2, Rights in Data—Technology Transfer, both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or acquired from other Government agencies or private entities in the performance of their contracts in accordance with any restrictive legends contained therein. For Research and Development Contracting, requirements for R&D results conveyed in scientific and technical information are addressed in 935.010 and should be set forth as part of the contract. These contractual requirements are further addressed in DOE Order 241.1B, or its successor version, which sets forth requirements for scientific and technical information.

* * * * *

(c) * * *

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–71, which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the management and operating contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

* * * * *

(e) The Rights in Data—Technology Transfer clause at 970.5227–2 differs from the clause at 970.5227–1, Rights in Data—Facilities, in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the management and operating contractor in advancing the technology transfer mission of the contract. The clause at 970.5227–2, Rights in Data—Technology Transfer, provides for DOE approval of DOE's taking a limited copyright license during the period in which the copyrighted data is being commercialized. The contractor must notify DOE (Patent Counsel and Office of Scientific and Technical Information (OSTI)) when commercial activity ceases.

* * * * *

■ 213. Section 970.2704–3 is revised to read as follows:

§ 970.2704–3 Contract clauses.

(a) The contracting officer shall insert the clause at 970.5227–1, Rights in Data—Facilities, in management and operating contracts which do not contain the clause at 970.5227–2, Rights in Data—Technology Transfer. The Contracting Officer may insert, with concurrence of Patent Counsel, the clause at 970.5227–1, Rights in Data—Facilities, in other contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning. The contracting officer shall include the clause with its Alternate I in contracts

where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors. The Contracting Officer shall include the clause with its Alternate II in contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

(b) The contracting officer shall insert the clause at 970.5227–2, Rights in Data—Technology Transfer, in management and operating contracts which contain the clause at 970.5227–3, Technology Transfer Mission. The contracting officer shall include the clause with its Alternate I in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors. The Contracting Officer shall include the clause with its Alternate II in contracts where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

■ 214. Amend section 970.2770–2 by adding a sentence after the first sentence to read as follows:

§ 970.2770–2 Policy.

* * * All new awards for or extensions of existing DOE laboratory or weapon production facility M&O contracts shall include authorization for the M&O contractor to engage directly with third parties in Agreements for Commercializing Technology, under section 107 of the Department of Energy Research and Innovation Act, Public Law 115–246, by using 970.5217–2, Agreements for Commercializing Technology. * * *

■ 215. Amend section 970.2803–1 by revising paragraph (b) to read as follows:

§ 970.2803–1 Workers' Compensation Insurance.

* * * * *

(b) *Assignment of responsibilities.* (1) Office of Acquisition Management, other officials, and the Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of paragraph (a) of this section.

(2) In discharging assigned responsibility, the Heads of Contracting Activities shall—

(i) Periodically review workers' compensation insurance programs of management and operating contractors in the light of applicable workers' compensation statutes to assure conformance with the requirements of paragraph (a) of this section;

(ii) Evaluate the adequacy of coverage of ''self-insured'' workers'' compensation programs; and

(iii) Provide arrangements for the administration of any existing ''employees'' benefit plans until such plans'' are terminated.

(3) Heads of Contracting Activities are responsible for approving management and operating contractor ''employees' benefit plans.''

■ 216. Amend section 970.2803–2 by revising the second sentence to read as follows:

§ 970.2803–2 Contract clause.

* * * Paragraphs (f)(1)(iii)(C) and (g)(2) of that clause apply to a nonprofit contractor only to the extent specifically provided in the individual contract.

■ 217. Section 970.3101–00–71 is added to read as follows:

§ 970.3101–00–71 Applicability.

The cost principles of FAR subpart 31.2 and this subpart apply regardless of entity type for the M&O contract.

■ 218. Amend section 970.3102–3–70 by revising paragraph (a)(3)(i) to read as follows:

§ 970.3102–3–70 Home office expenses.

(a) * * *

(3) * * *

(i) Fee in addition to its normal fee; or

* * * * *

■ 219. Section 970.3102–05–6 is revised to read as follows:

§ 970.3102–05–6 Compensation for personal services.

(a)(6) In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, the contracting officer shall designate a compensation threshold appropriate for the particular situation. The contract shall specifically provide that contracting officer approval is required for compensating an individual contractor employee above the threshold if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts.

(7)(i) Reimbursable costs for compensation for personal services are to be set forth in the contract. This compensation shall be set forth using the principles and policies of FAR 31.205–6, Compensation for personal services, as supplemented by this section, and other pertinent parts of the DEAR. Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

(ii) The contract sets forth, in detail, personnel costs and related expenses allowable under the contract and documents personnel policies, practices and plans which have been found acceptable by the contracting officer. The contractor will advise DOE of any proposed changes in any matters covered by these policies, practices, or plans which relate to personnel costs. Types of personnel costs and related expenses addressed in the contract are as follows: Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; welfare benefits and retirement programs; paid time off, and salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee above an annual rate as specified in the contract. Allowable costs of employee compensation shall be determined pursuant to FAR 31.205–6(p).

§ 970.3200–1 [Amended]

■ 220. Amend section 970.3200–1 in paragraph (c) by removing ''remedy coordination official'' and adding in its place ''Head of the Contracting Activity''.

§ 970.3270 [Amended]

■ 221. Amend section 970.3270 by removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (8) as paragraphs (a)(4) through (7), respectively.

■ 222. Amend section 970.3501–1 by:

■ a. Removing the period at the end of paragraph (c)(1) and adding a semicolon in its place; and

■ b. Revising paragraph (c)(2).

The revision reads as follows:

§ 970.3501–1 Sponsoring agreements.

* * * * *

(c) * * *

(2) The plan for the identification, use, and disposition of retained earnings, if applicable;

* * * * *

■ 223. Section 970.3501–2 is revised to read as follows:

§ 970.3501–2 Using an FFRDC.

The contractor may only accept work from a non-sponsor (as defined in FAR 35.017) in accordance with the requirements of the current DOE approved mechanisms for engaging with a non-sponsor (*e.g.,* Strategic Partnership Projects, Cooperative Research and Development Agreements, and Agreements for Commercializing Technology). Only a Federal Contracting Officer can obligate the Government to place work on the contract and obligate the Government to reimburse the contractor under the contract.

■ 224. Amend section 970.4102–1 by revising paragraphs (b) and (c) to read as follows:

§ 970.4102–1 Policy.

* * * * *

(b) Where it is determined to be in the best interest of the Government, a DOE contracting activity may authorize a management and operating contractor for a facility to acquire such utility service for the facility, after requesting and receiving concurrence to make such an authorization from the DOE Federal Energy Management Program (FEMP). Any request for such concurrence should be included in the Utility Acquisition Plan. Alternatively, it may be made in a separate document submitted to the FEMP Utility Program Manager early in the acquisition cycle. Any request shall set forth why it is in the best interest of the DOE to acquire utility service(s) by subcontract, *i.e.,* low performance risk and cost risk. For NNSA programs, FEMP review and technical input may be obtained, but FEMP concurrence is not necessary.

(c) The requirements of FAR part 41 and this section shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

■ 225. Amend section 970.4207–05–01 by revising paragraph (b)(4)(ii) to read as follows:

§ 970.4207–05–01 Contracting officer determination procedure.

(b) * * *

(4) * * *

(ii) The opinion of the Department of Energy's auditor on the allowability of such costs if such costs have been the subject of a DOE audit.

* * * * *

■ 226. Amend section 970.4401–1 by revising paragraph (b)(4) to read as follows:

§ 970.4401–1 General.

* * * * *

(b) * * *

(4) Ensure that periodic appraisals of the contractor's management of all facets of the purchasing function, including compliance with the contractor's approved system and methods, are performed by the contracting officer.

* * * * *

■ 227. Amend section 970.4402–1 by adding paragraph (c) to read as follows:

§ 970.4402–1 Policy.

* * * * *

(c) The M&O contractor's purchasing performance, including compliance with the contractor's approved system and methods, will be evaluated against the performance criteria and measures set forth in FAR subpart 44.3, using the procedures articulated in DOE policies including DOE guidance on oversight of M&O Contractors' Purchasing Systems.

■ 228. Section 970.4501–1 is revised to read as follows:

§ 970.4501–1 Applicability.

This subpart is applicable to management and operating (M&O) contractors, and on-site environmental management and other major prime contractors as designated by the Senior Procurement Executive, or designee. This subpart supplements 41 CFR part 109.

■ 229. Section 970.4501–2 is added to read as follows:

§ 970.4501–2 Contract clause.

(a) The contracting officer shall insert the clause at 970.5245–1, Property, in management and operating contracts and environmental management, and other major prime contractors located at DOE sites. Specific managerial personnel may be listed in paragraph (k) of the clause at 970.5245–1, provided their listing is consistent with the clause and the DEAR.

(b) The contracting officer shall insert the basic clause at 970.5245–1 with its Alternate I in contracts with nonprofit contractors.

■ 230. Amend section 970.5203–1 by revising the introductory text to read as follows:

§ 970.5203–1 Management controls.

As prescribed in 970.0370–2(a), insert the following clause:

* * * * *

§ 970.5204–1 [Removed]

■ 231. Section 970.5204–1 is removed.

■ 232. Amend section 970.5204–3 by revising the clause date and paragraphs (b) and (g) to read as follows:

§ 970.5204–3 Access to and ownership of records.

* * * * *

Access to and Ownership of Records (XXX 20XX)

* * * * *

(b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

* * * * *

(g) *Subcontracts.*

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 48 CFR 952.223–72, or whenever an on-site subcontract scope of work:

(i) Could result in potential exposure to:

(A) Radioactive materials;

(B) Beryllium; or

(C) Asbestos; or

(ii) Involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in:

(A) Radiological areas and/or radioactive materials areas (as defined at 10 CFR 835.2);

(B) Areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR part 850;

(C) An asbestos regulated area (as defined at 29 CFR 1926.1101 or 1910.1001); or

(D) A workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor and maintain records that would otherwise be maintained by the subcontractor.

* * * * *

■ 233. Section 970.5209–70 is added to read as follows:

§ 970.5209–70 Conflicts of interest.

As prescribed in 970.0906, insert the following clause:

Conflicts of Interest (XXX 20XX)

(a) The M&O contractor shall ensure, in accordance with 48 CFR part 9, subpart 9.5, that it maintains and enforces a written policy on conflicts of interest (COI).

(b) The restrictions described herein shall apply to performance or participation by the M&O contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as ''M&O contractor'') in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) *Use of M&O contractor's work product.* (i) The M&O contractor shall be ineligible to participate in any capacity in new Department contracts, subcontracts, or acquisition request for proposals (solicited and unsolicited) that stem directly from the M&O contractor's performance of work under this contract for a period of [enter specific term] years after the completion of this contract's work product, unless otherwise determined by the Contracting Officer for the new Department contract, subcontract, or acquisition request for proposal. Furthermore, unless so directed in writing by the Contracting Officer, the M&O contractor shall not perform any work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing.

(ii) If, under this contract, the M&O contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort based on such statement of work or specifications.

(iii) A Contractor performing under a Federally Funded Research and Development Center (FFRDC) contract (to discharge its responsibilities under the contract to the sponsoring agency) has access (beyond the access common in the typical contractual relationship between the Government and a Contractor) to both Government and supplier data (including sensitive and proprietary data) and to employees and installations' equipment and real property. Therefore, a FFRDC Contractor is required to: conduct its business in a manner befitting the uncommon access it has due to its special contractual relationship with the Government; operate in the public interest with objectivity and independence; be free from organizational conflicts of interest; and make full disclosure of its affairs to the sponsoring agency.

(2) *Access to and use of information.* (i) If the M&O contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data that have not been released or otherwise made available to the public, the M&O contractor agrees that without prior written approval of the Contracting Officer it shall not—

(A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) Compete for work for the Department based on such information for a period of six months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government that is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the M&O contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Contents of COI Policy.* The M&O contractor must take steps to ensure that policies and procedures are in place and provided to all employees, subcontractors, consultants and other appropriate entities.

(1) The policy shall include coverage for parents, affiliates, subsidiaries, subrecipients, and contractors, including subcontractors.

(2) The policy shall require disclosure by each investigator of all COI and require the disclosures to remain current.

(3) The policy shall designate one or more individuals to review disclosures by investigators.

(4) The policy should designate one or more individuals to oversee organizational review and enforcement of COI.

(5) The policy shall include adequate enforcement mechanisms and procedures for managing COI.

(6) The policy shall include appropriate restraints on intra-corporate relations between the M&O contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates. Such restraints shall include personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract.

(7) The policy shall include, where a university is the prime contractor, a statement identifying that the university has adopted policies and procedures, designed to avoid conflict-of-interest situations, which are in substantial conformance with the Joint Statement of the Council of American Association of University Professors and the American Council on Education of December 1964, entitled ''On Preventing Conflicts of Interest.''

(8) The policy shall be updated regularly, but at least once every five years.

(d) The M&O contractor must disclose all COIs that cannot be mitigated, including those with parent company, affiliate or subsidiaries, contractors, subrecipients and investigators to the Contracting Officer. Disclosure should be within 10 calendar days of identifying a COI. All COI disclosures

must be in writing and provided to the Contracting Officer. The COI disclosure should include a description of the COI, the actions in order to mitigate the COI and impacts to performance under the contract.

(e) *Waiver.* If the Contractor believes it both appropriate and in the best interests of the Government, the Contractor may request a waiver to any of this clause's requirements. In requesting a waiver, the Contractor shall: submit the request for waiver in writing to the Contracting Officer; include a full description of the requirements of this clause to be waived; and include compelling reasons why the requirements should be waived. The Contracting Officer: may approve or disapprove, in whole or in part, at the Contractor's Officer's sole discretion, the waiver request based on the Contracting Officer's determination of what is in the best interests of the Government; and will approve or deny the waiver request in writing.

(f) *Subcontracts.* The Contractor shall include the clause at 48 CFR 952.209–72, ''Organizational Conflicts of Interest,'' in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms ''contract,'' ''Contractor,'' and ''Contracting Officer'' shall be appropriately modified to preserve the Government's rights.

Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507–1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

(End of clause)

■ 234. Section 970.5215–1 is revised to read as follows:

§ 970.5215–1 Total available fee: Base fee amount and performance fee amount.

As prescribed in 970.1504–3(a), insert the following clause.

Total Available Fee: Base Fee Amount and Performance Fee Amount (XXX 20XX)

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, ''Payments and advances.''

(b) *Fee negotiations.* For any fee negotiations under this contract, at any time prior to the beginning of the evaluation period the negotiations cover, the Contracting Officer and Contractor shall attempt to reach agreement on: the requirements for the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives; the total available fee amount of the evaluation period; and the allocation of the total available fee amount. If agreement is reached prior to the beginning of the evaluation period, the Contracting Officer shall modify the contract to reflect the agreement. If agreement is not reached prior to the beginning of the evaluation period, the Contracting Officer will, prior to the beginning of the evaluation period, unilaterally determine: the requirements of the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives, the total available fee amount, and the allocation of the total available fee amount. The Contracting Officer shall modify the contract to reflect the determination.

(c) *Determination of total available fee amount earned.* (1) The Department of Energy (DOE) shall, at the conclusion of each specified evaluation period, evaluate the Contractor's performance of all requirements, and determine the total available fee amount earned. At DOE's discretion, if the contact established specific incentivized requirements and a schedule for their completion and the Contractor completes them during the evaluation period, DOE may evaluate the Contractor's performance upon the requirements' completion. The Contractor agrees the determination of the total available fee amount earned is a unilateral determination made by the Fee Determining Official (FDO). DOE will identify the FDO. The FDO will be the DOE Operations/Field Office Manager, or another DOE official designated by the Assistant Secretary or equivalent (not delegable).

(2) If the award fee cycle consists of one evaluation period, award fee not earned during the evaluation period shall not be allocated to future evaluation periods. At the sole discretion of DOE, if the award fee cycle consists of more than one evaluation period, award fee not earned during the evaluation period may be allocated to future evaluation periods within the same award fee cycle.

(3) Following each evaluation period, the Contractor [insert may or shall] submit a self-assessment within [insert number] calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct them and avoid their recurrence. The FDO will review the Contractor's self-assessment as part of the evaluation of the Contractor's performance during the period.

(4) The FDO will evaluate the Contractor's performance in accordance with the Performance Evaluation and Measurement Plan (PEMP) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the total available fee amount earned determination and the basis of the determination.

(d) *PEMP.* To the extent not set forth elsewhere in the contract:

(1) DOE shall establish a PEMP upon which the determination of the total available fee amount earned shall be based. The PEMP will address all of the requirements of contract performance specified in the contract directly or by reference. The Contracting Officer shall provide the Contractor with a copy of the PEMP before the start of an evaluation period.

(2) The PEMP will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. The PEMP will include, per 48 CFR 16.402–1, a cost incentive (or constraint). The criteria in the PEMP should be objective but may also include subjective criteria. The PEMP will set forth the method by which the total available fee amount will be allocated, and the total available fee amount earned will be determined.

(3) The PEMP may be revised, either unilaterally (by DOE) or bilaterally, during the evaluation period. If it is revised, the Contracting Officer shall notify the contractor—

(i) Of unilateral revisions (unless they are urgent and high priority) at least ninety calendar days prior to the end of the evaluation period and at least thirty calendar days prior to the effective date of the revision;

(ii) Of bilateral revisions (unless they are urgent and high priority) at least sixty calendar days prior to the end of the evaluation period;

(iii) Of urgent and high priority revisions, whether made unilaterally or bilaterally, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The FDO shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the PEMP or as otherwise set forth in this contract.

(1) The determination for the evaluation period must be made within the later of: sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted; seventy calendar days after the end of the evaluation period; or a longer period if the Contractor and Contracting Officer agree.

(2) If the FDO elects to evaluate the Contractor's performance of any specific requirements upon their completion, the determination of any fee amount earned must be made: within seventy calendar days of the requirements' completion; or a longer period if the Contractor and Contracting Officer agree.

(3) If the determination is not made within the periods stated above, the Contractor shall be entitled to interest on the total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 7109) that is in effect on the payment date. This rate is referred to as the ''Renegotiation Board Interest Rate,'' and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is made. That is, interest accrued at the end of any 30-day period will be added to the total available fee amount earned and be subject to interest if not paid in the succeeding 30-day period.

(End of clause)

■ 235. Section 970.5215–3 is revised to read as follows:

§ 970.5215–3 Conditional payment of fee, profit, and other incentives—facility management contracts

As prescribed in 970.1504–3(b), insert the following clause:

Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts (XXX 20XX)

(a) *Definitions.* ''Amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period'' means the quantity the Contracting Officer or Fee Determining Official determines the Contractor is due for its performance in consideration of the Performance Evaluation and Measurement Plan, Award Fee Plan, or similar document prior to a separate determination that the Contractor did not comply with a term or condition of the contract or experienced a failure relating to: environment, safety, and health; security or safeguarding of Restricted Data and other classified information; or business and financial systems. If the contract includes incentives allocable to more than one evaluation period, the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period includes the allocable amount of payment for each such incentive for otherwise earned fee, fixed fee, profit, or other incentives. The allocable amount is the total amount divided by the number of evaluation periods the incentive covered. ''Amount actually payable to the Contractor for an evaluation period'' means: (the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period) less (the amount of any reduction under this clause and the amount of any reductions under other clauses to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period).

(b) *General.* (Note: If this contract does not include the Security Requirements clause (48 CFR 952.204–2), the requirements of this clause related to security or safeguarding of Restricted Data and other classified information do not apply.)

(1) The amount of payment of otherwise earned fee, fixed fee, profit, or other incentives for any evaluation period under this contract is dependent upon the Contractor's and the Contractor's employees' compliance during the evaluation period with the performance requirements of this contract relating to:

(i) Environment, safety and health (ES&H), which includes worker safety and health (WS&H);

(ii) Security or safeguarding of Restricted Data and other classified information; and

(iii) Business and financial systems.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE-approved contractor Integrated Safety Management System (ISMS) or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The security or safeguarding of Restricted Data and other classified information performance requirements of this contract are set forth in: the clause of this contract entitled, ''Security Requirements''; the clause of this contract entitled ''Laws, Regulations, and DOE Directives''; and other terms and conditions of this contract.

(4) The business and financial systems performance requirements of this contract are set forth in terms and conditions relating to management, accounting, property, procurement, and earned value management, such as the ''Management controls'' clause.

(5) If the Contractor does not meet the performance requirements of this contract relating to ES&H, security or safeguarding of Restricted Data and other classified information, or business and financial systems during any evaluation period established under the contract pursuant to the clause of this contract entitled ''Total Available Fee: Base Fee Amount and Performance Fee Amount,'' the amount of payment of otherwise earned fee, fixed fee, profit or other incentives for the evaluation period may be unilaterally reduced by the Contracting Officer.

(c) *Amount of Reduction.* (1) The Contracting Officer will unilaterally determine the amount of reduction to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for an evaluation period based on the severity of the performance failure pursuant to the degrees of failure specified in paragraphs (e), (f), and (g) of this clause. The percent reduction for each performance failure will be: not less than 26% nor more than 100% for a first degree failure; not less than 11% or more than 26% for a second degree failure; and no more than 11% for a third degree failure.

(2) For a reduction allocable to more than one evaluation period, the Government will effect the allocation at the end of the evaluation period in which it determines the total amount of the reduction. The allocable amount is

the total reduction amount divided by the number of evaluation periods the reduction covered.

(3) The Government will reduce the payment of otherwise earned fee, fixed fee, profit, or other incentives as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practicable after becoming aware.

(4) In determining the reduction and in applying the mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H, security or safeguarding of Restricted Data and other classified information, or business and financial systems performance requirements of the contract. Such consideration must include performance against any site-specific performance criteria/requirements that provide additional definition or guidance for the amount of reduction or for the applicability of mitigating factors. In all cases, the Contracting Office must consider mitigating factors that may warrant a reduction below the reduction that would be appropriate absent mitigating factors. Mitigating factors include, but are not limited to, the following (paragraphs (c)(4)(v), (vi), (vii), and (viii) of this clause apply to ES&H only):

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas; and business and financial systems and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced.

(vi) Event caused by ''Good Samaritan'' act by the Contractor (*e.g.,* offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.,* policy, ES&H programs).

(viii) Contractor demonstration that an operating experience and feedback program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons learned and best practices inter- and intra-DOE sites.

(d) *Reductions to the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives under this and other clauses.*

(1) The amount of the reduction under this clause for an evaluation period, in combination with the amount of any reduction under any other clause, shall not exceed the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the evaluation period.

(2) If at any time during the contract any reductions under this clause or other clauses result in the sum of the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives to exceed the sum of the amounts of actually payable to the Contractor, the Contractor shall immediately return the excess to the Government.

(3) At the end of the contract—

(i) The Government will pay the Contractor the amount by which the sum of amounts actually payable to the Contractor exceeds the sum of the payments the Contractor has received; or

(ii) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of the amounts actually payable to the Contractor.

(e) *Environment, Safety and Health (ES&H).* Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including applicable ES&H laws, regulations, DOE directives, and the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) *First Degree.* Performance failures most adverse to ES&H are first degree. They include:

(i) Failure to develop and obtain required DOE approval of an ISMS. (The Government will perform necessary reviews in a timely manner and not unreasonably withhold approval.)

(ii) Performance failures determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or that could reasonably be expected to result in, serious injury or death to a worker.

(iii) Occurrence of any accident or event that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) and results in a determination to conduct a Federal Accident Investigation Board.

(2) *Second Degree.* Performance failures significantly adverse to ES&H are second degree. They include:

(i) Failures to comply with an approved ISMS.

(ii) Failures that have been determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or could reasonably be expected to result in, an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences.

(iii) A breakdown of the Safety Management System.

(iv) The following performance failures or performance failures of similar import will be considered second degree:

(A) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in an accident that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) but not resulting in a determination to conduct a Federal Accident Investigation Board.

(B) Non-compliance with applicable ES&H laws, regulations, or DOE directives that results in a near miss of an accident or event that could have resulted in an adverse effect and a determination to conduct a Federal Accident Investigation Board. (A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, that does not result in an adverse effect.)

(3) *Third Degree.* Performance failures determined per applicable ES&H laws, regulations, or DOE directives to reflect a lack of focus on improving ES&H are third degree. They include:

(i) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in potential breakdown of the Safety Management System. The following performance failures or performance failures of similar import will be considered third degree:

(A) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (*e.g.,* Federal) oversight and/or reported per DOE Order 231.B (or successor Order) requirements; or internal oversight of 10 CFR parts 830, 835, 850, and 851, or DOE Orders 227.1A and 436.1 (or successor Order) requirements.

(B) Multiple similar non-compliances identified by external (*e.g.,* Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(C) Non-compliances that have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(D) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(f) *Security or Safeguarding Restricted Data and Other Classified Information.* Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or other incentives will be determined are as follows:

(1) *First Degree.* Performance failures determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security are first degree. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) *Second Degree.* Performance failures determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security are second degree. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information regardless of classification (except for information covered by paragraph (f)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) *Third Degree.* Performance failures determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security are third degree. This category also includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future more severe performance failures and/or conditions that if identified and corrected early would prevent serious incidents. The following are examples:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures that by themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(g) *Business and Financial systems.* Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to business and financial systems. The degrees of performance failure under which reductions of fee, profit, or other incentives will be determined are:

(1) *First Degree.* A performance failure that poses significant adverse long-term practical consequences to the mission of the site is a first-degree performance failure.

(2) *Second Degree.* A performance failure that poses measurable, but less than significant, adverse long-term practical consequences to the mission of the site is a second-degree performance failure.

(3) *Third Degree.* A performance failure that results in minor adverse long-term practical consequences to the mission of the site is a third-degree performance failure.

(End of clause)

§ 970.5215–4 [Removed]

■ 236. Section 970.5215–4 is removed.

■ 237. Section 970.5215–5 is revised to read as follows:

§ 970.5215–5 Limitation on fee.

As prescribed in 970.1504–3(c), insert the following provision:

Limitation on Fee (XXX 20XX)

(a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504–1–1, or as specifically stated elsewhere in the solicitation.

(b) The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit the total available fee to an amount allowed by the fee policy at 48 CFR 970.1504–1–1 unless specifically stated in this solicitation.

(End of provision)

■ 238. Section 970.5217–1 is revised to read as follows:

§ 970.5217–1 Strategic partnership projects program.

As prescribed in 970.1707–4, insert the following clause:

Strategic Partnership Projects Program (Non-Doe Funded Work) (XXX 20XX)

(a) *Authority to perform Strategic Partnership Projects.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause. For instances in which the Atomic Energy Act of 1954 does not apply, and no other specific authority applies, DOE may use the Economy Act of 1932, as amended (31 U.S.C. 1535), as authority to accept and perform the work.

(b) *Contractor's implementation.* The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) *Conditions of participation in Strategic Partnership Projects program.* The Contractor—

(1) Must not perform Strategic Partnership Projects activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Strategic Partnership Projects activity until a Strategic Partnership Projects proposal package has been approved by the DOE Contracting Officer or designated representative or, if it includes support for a Special Access Program (SAP), receives formal approval outlined in DOE Order 471.5 (or its successor), or the work falls under an approved Master Statement of Work (MSW);

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232–6;

(5) Must ensure that all costs associated with the performance of the work, as provided for in the current version of DOE Order 522.1, Pricing of Departmental Materials and Services, including specifically all DOE direct costs and applicable surcharges, are included in any Strategic Partnership Projects proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Strategic Partnership Projects activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Strategic Partnership Projects agreements in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Strategic Partnership Project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the Contractor's performance as defined in the DOE approved Strategic Partnership Projects proposal package;

(9) Must maintain a summary listing of project information for each active Strategic Partnership Projects project, consisting of—

(i) Sponsoring agency;

(ii) Total estimated costs;

(iii) Project title and description;

(iv) Project point of contact; and,

(v) Estimated start and completion dates; and,

(10) May use a Master Scope of Work (MSW) as defined in 48 CFR 970.5227–3 in a Strategic Partnership Project Agreement.

(d) *Negotiation and execution of Strategic Partnership Projects agreement.* (1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Strategic Partnership Projects project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in the current version of DOE Order 481.1 or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Strategic Partnership Projects agreement.

(2) With the exception of a Strategic Partnership Project using a Contracting Officer approved MSW, the Contractor must submit all Strategic Partnership Projects agreements to the DOE Contracting Officer for DOE review and approval. The Contactor shall also include in any request for DOE approval a listing of any associated intellectual property having a prior assignment, exclusive licensing or option for exclusive licensing. The Contractor may not execute any proposed agreement until it has received notice of DOE approval except when the work falls under an approved MSW.

(3) The Contractor is authorized to reserve the intellectual property indemnity clause for federally-funded sponsors, state and local governments and public universities. The Contractor is further authorized to include in subcontracts with other domestic sponsors (*i.e.,* private universities and small and large businesses a warranty provision in lieu of a patent indemnification clause.)

(e) *Preparation of project proposals.* When the Contractor proposes to perform Strategic Partnership Projects activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) *Strategic Partnership Projects appraisals.* DOE may conduct periodic appraisals of the Contractor's compliance with its Strategic Partnership Projects Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) *Annual Strategic Partnership Projects report.* The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects Activities under the contract.

(End of clause)

■ 239. Section 970.5217–2 is added to read as follows:

§ 970.5217–2 Agreements for commercializing technology.

As prescribed in 970.1708–3, insert the following clause:

Agreements for Commercializing Technology (Act) (XXX 20XX)

(a) This clause authorizes the use of the mechanism, Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at commercialization (*e.g.,* technical assistance, training, studies), but that facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services, training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. Any allocation of resources that adversely affects work for DOE due to performing ACT work is the responsibility of the M&O Contractor. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph (b)(9) below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

(b) The following applies to all work conducted under the ACT mechanism, regardless of the source of funding:

(1) *Authority to Perform work under this clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and other applicable authorities, the M&O Contractor may perform work for non-Federal entities, in accordance with the requirements of this clause.

(2) *M&O Contractor's Implementation.* For ACT work conducted under the contract, the M&O Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.

(3) *Conditions for Participation in ACT.* The M&O Contractor: (i) Must not perform ACT activities that would place it in direct competition with the private sector;

(ii) May only conduct work under this clause if the work does not interfere with or adversely affect projects and programs the M&O Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract If the Government determines that an activity conducted under this clause interferes with the Department's work under the M&O contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the M&O Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the M&O Contractor's activities under this clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the M&O Contractor. The Contracting Officer shall provide to the M&O Contractor in writing its decision, identifying the issues and reasons for the decisions. The M&O Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;

(iii) Except as otherwise excluded in this clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this M&O contract, including but not limited to environmental, safety and health, security, safeguards, conflict of interest and classification procedures, and human and animal research regulations;

(iv) Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;

(v) Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property infringement; and a statement that the Government and/or the M&O Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this M&O contract subject to applicable data restrictions;

(vi) Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O Contractor has its own pre-approved publications statement, and this should be included; and

(vii) Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (*e.g.,* bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

DISCLAIMER

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF THE M&O CONTRACTOR] AND [THE OTHER IDENTIFIED PARTY]. THE UNITED STATES GOVERNMENT IS *NOT* A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS

DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

(4) *Contracting Authority.* (i) Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The Government will have no obligation to the M&O Contractor due to such terms and conditions.

(ii) The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.

(A) A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011–013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use Cooperative Research and Development Agreement (CRADA) and Strategic Partnership Project (SPP) alternatives (see paragraph (b)(7)(i) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized; applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.

(B) If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph (b)(7) of this clause).

(C) If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.

(iii) The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under subparagraph (b)(4)(ii)(B) of this clause within 10 business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: is consistent with or complementary to DOE missions and the contract statement of work; will not adversely impact programs under the contract scope of work; will not place the contractor in direct competition with the domestic private sector; and will not create a detrimental future burden on DOE resources.

(iv) Except as conditionally allowed under subparagraph (b)(4)(iv)(A) of this clause, the Contracting Officer must approve the Package before the M&O Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package, then the Contracting Officer must provide said rejection to the M&O Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the M&O Contractor agrees to not further pursue the work described in the package or incur additional costs under the M&O contract for the work described in the Package.

(A) The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in subparagraph (b)(4)(ii) of this clause, within 10 business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this clause.

(B) If any source affiliated with the M&O Contractor (any division, subsidiary, or affiliate of the M&O Contractor or its parent company) is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.

(5) *Advance Payment for ACT Projects.* The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this clause, the M&O Contractor is entirely at risk and the Government shall have no risk.

(6) *Costs and Fee.* (i) All direct costs associated with the M&O Contractor's work conducted under this clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this M&O contract shall also be applied to work conducted under this clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs that would include Federal Administrative Charge (FAC).

(ii) Work conducted under this clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this clause.

(7) *Organizational Conflict of Interest.* The M&O Contractor shall conduct work under this clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the M&O Contractor's functions under this M&O contract. Accordingly, the M&O Contractor shall develop an Organizational Conflict of Interest Mitigation Plan (OCI Plan). The OCI Plan should address OCI issues that arise as a result of the M&O Contractor taking a financial interest in ACT projects, especially in those cases where the M&O Contractor retains rights in ACT IP. Said OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the M&O contract modification incorporating this clause into the M&O contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:

(i) *Full Disclosure.* Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs *e.g.,* insurance, and other compensation to the M&O Contractor under ACT) for each type of agreement for the scope of work being proposed.

(ii) *Priority of Work.* The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.

(iii) *Participation by Contractor-affiliated sources:* If any source affiliated with the M&O Contractor (any division, subsidiary, or affiliate of the M&O Contractor or its parent company) is a party to the ACT agreement, the M&O Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.

(iv) *Right of Inquiry for ACT IP Designation.* The Contracting Officer, upon request of DOE Patent Counsel may inquire into the M&O Contractor's designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.

(8) *Intellectual Property.* Disposition of intellectual property (IP) arising from work conducted under this clause shall be governed by Class Waiver W(C)–2011–013 (ACT Class Waiver), which is incorporated herein by reference.

(i) All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the [*cite Patent Rights—M&O contract, Nonprofit Organization or Small Business Firm Contractor*] clause of this M&O contract.

(ii) In reporting ACT inventions, the M&O Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.

(iii) All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.

(iv) The M&O Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.

(v) Where the M&O Contractor receives ownership or license rights to ACT IP, the M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.

(vi) As an alternative to subparagraph (b)(8)(v) of this clause, if the M&O Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the M&O Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this M&O contract. The M&O Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this M&O contract.

(vii) For ACT projects in which the terms of the Agreement provide that the Government reserves the right to use generated data after the particular project expires, the M&O Contractor must provide, to the DOE Office of Technical Information (OSTI), computer software produced under the Agreement in both source and executable object code format.

(viii) Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

(9) *Contractor Liability and Indemnification.*

(i) *General Indemnity.*

(A) The M&O Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the M&O Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the M&O Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the M&O Contractor) acting on their behalf.

(B) Subject to Contracting Officer approval, the General Indemnity set forth in this paragraph (b)(9)(i) may be modified or waived where:

(*1*) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (*2*) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (*3*) the specific activities performed under the ACT transaction are normally performed by the DOE M&O Contractor under the DOE contract.

(C) Notwithstanding the provisions in a (b)(9)(i)(A) and (B) above, the M&O Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the M&O

Contractor. Such indemnification shall be subject to a liability limit of $2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE Contracting Officer under the DOE contract. Above the applicable liability limit, the M&O Contractor's responsibility to the Government for such loss, damage or destruction, shall be as set forth in the ''Property'' clause of this contract.

(ii) *Intellectual Property Indemnity.* The M&O Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the M&O contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the M&O Contractor unless required by a court of competent jurisdiction.

(iii) *Product Liability Indemnity.*

(A) Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.

(B) Where the M&O Contractor assigns the responsibility for indemnifying the Government under subparagraph (b)(9)(iii)(A) of this clause to other ACT participants, the M&O Contractor agrees to seek such indemnification from the other ACT participants.

(iv) *Claims and Liabilities.* Claims and liabilities resulting from the M&O Contractor's performance of work under an ACT transaction authorized pursuant to this clause shall not be subject to the M&O contract clause entitled ''Insurance—Litigation and Claims.'' In no event shall the M&O Contractor be reimbursed under the M&O contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third party claims related to the M&O Contractor's performance under this clause.

(v) *Government Obligations.* The M&O Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment the M&O Contractor executes under authority of this clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.

(vi) *Insurance.* Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.

(10) *ACT Records.* All records associated with the M&O Contractor's activities conducted under the authority of this clause, with the exception of information required under paragraphs (b)(3)(v), (b)(4)(ii)(A), and (b)(13) of this clause shall be treated as M&O Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.

(11) *Termination.* The Government or the M&O Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the M&O Contractor) as appropriate, no less than 60 days prior to the requested termination date. In such cases, the M&O Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated with early termination of any ACT agreements prior to the completion shall be the responsibility of the M&O Contractor.

(12) *Successor M&O Contractor.* To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O Contractor, ACT agreement(s) executed under this clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a Non-Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

(13) *Minimum Reporting requirements.* The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the M&O contract and the number that had not previously sponsored projects under any DOE M&O contract, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The M&O Contractor shall establish performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The M&O Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for performance of work under the M&O contract. Also, the M&O Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format that will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this M&O contract. Such records shall be made available in accordance with the clauses of this

M&O contract pertaining to inspection, audit and examination of records.

(End of clause)

■ 240. Section 970.5219 is added to read as follows:

§ 970.5219 Small business subcontracting plan.

As prescribed in 970.1907–8(b), supplement the clause at FAR 52.219–9 with the following:

Small Business Subcontracting Plan (XXX 20XX)

(b) *Definitions.* ''First-tier subcontract'' means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

''*Management and Operating Contractor Subcontract Reporting Capability (MOSRC)*'' means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

''*Transaction*'' means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by the Contractor acquiring supplies or services (including construction) required solely for performance of the prime contract.

(l)(3) *MOSRC.* The Contractor shall collect and report data via MOSRC necessary for DOE to meet its agency reporting requirements, as determined by the Small Business Administration. The Contractor shall report first-tier subcontract data in MOSRC. Classified subcontracts shall not be reported. Subcontracts with Controlled Unclassified Information marking shall not be reported if restricted by its category. The Contractor should contact its Contracting Officer if uncertain of reporting requirements. The MOSRC requirement does not replace any other reporting requirements under this clause.

(End of clause)

■ 241. Section 970.5222–4 is added to read as follows:

§ 970.5222–4 Unemployment compensation.

As prescribed in 970.2270–2, insert the following clause.

Unemployment Compensation (XXX 20XX)

(a) When under state law the contractor is permitted the option to pay unemployment claims either through the state unemployment insurance tax (pay in) or by reimbursing the state for actual claims paid out to former employees (opt out), the contractor shall provide the following:

(1) *Statement of Coverage.* The statement of coverage shall identify whether the contractor will opt into the state unemployment fund through payment of the unemployment insurance tax or opt out by reimbursing the state(s) for actual claims paid. A statement of coverage shall be provided within (fill in) __calendar days of contract award, contract extension, or exercise of an option.

(2) *Change in Election Status.* The contractor shall notify the contracting officer no less than (fill in) __calendar days before state approval is sought to change its pay in or opt out election.

(b) The Government reserves the right to request additional information to assess budgetary and programmatic risks and impact when the contractor chooses to opt out.

(End of clause)

§ 970.5223–6 and 970.5223–7 [Removed]

■ 242. Sections 970.5223–6 and 970.5223–7 are removed.

■ 243. Section 970.5226–1 is revised to read as follows:

§ 970.5226–1 Diversity plan.

As prescribed in 970.2671–2, insert the following clause:

Diversity Plan (XXX 20XX)

The Contractor shall submit a Diversity, Equity, Inclusion, and Accessibility (DEIA) Plan to the Contracting Officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The Contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in the Appendix __. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling, harassment, discrimination, and/or retaliation based on protected EEO categories.

(End of clause)

■ 244. Amend section 970.5227–1 by:

■ a. Revising the clause date and paragraphs (a), (b)(1) introductory text, and (b)(1)(ii);

■ b. Adding paragraphs (b)(4) and (c)(3);

■ c. Revising paragraph (d)(1);

■ d. Removing ''(End of clause)'' after Alternate I and adding in its place ''(End of Alternate)''; and

■ e. Adding Alternate II after Alternate I.

The revisions and additions read as follows:

§ 970.5227–1 Rights in data—facilities.

* * * * *

Rights In Data—Facilities (XXX 20XX)

(a) *Definitions.*

Assistant General Counsel for Technology Transfer and Intellectual Property is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

(1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term ''data'' does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense

that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) * * *

(1) Except as may be otherwise expressly provided or directed in writing by the Patent Counsel, the Government shall have:

* * * * *

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by Patent Counsel;

* * * * *

(4) In the performance of DOE contracted obligations, each contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, the Office of Scientific and Technical Information (OSTI). Requirements for all such reportable information to OSTI are in DOE Order 241.1, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) * * *

(3) If the Contractor has not been granted permission to copyright technical data or computer software first produced under the contract, and if the Government desires to obtain copyright in such data and computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) * * *

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures the clause entitled, ''Rights in Data—General'' at 48 CFR 52.227–14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall use the ''rights in Data—Facilities clause at 48 CFR 970.5227–1.

* * * * *

Alternate II (DATE XXXX). As prescribed in 970.2704–3(a), where Government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice required by paragraph (e) of the basic clause:

(f) This ''limited rights data'' may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed.

(End of alternate)

■ 245. Section 970.5227–2 is revised to read as follows:

§ 970.5227–2 Rights in data—technology transfer.

As prescribed in 970.2704–3(b), insert the following clause:

Rights In Data—Technology Transfer (XXX 20XX)

(a) *Definitions.*

Assistant General Counsel for Technology Transfer and Intellectual Property is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

(1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term ''data'' does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

Open source software, as used in this clause, means computer software with

its source code that is distributed under a license in which the user is granted the right to use, copy, modify, and prepare derivative works thereof, without having to make royalty payments.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) Except as may be otherwise expressly provided or directed in writing by the Patent Counsel, the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by Patent Counsel, appropriate instances of the DOE Strategic Partnership Projects Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. When delivering all Contractor-produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause (''Rights in Limited Rights Data'') or paragraph (i) of this clause (''Rights in Restricted Computer Software''); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical works, and works produced by Contractor under 48 CFR 952.204–75 as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, each Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, OSTI. Requirements for all such reportable information to OSTI are in DOE Order 241.1B, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) *Copyright (General).* (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraph (d), (e), or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d), (e), or (f) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(3) If the Contractor has not been granted permission to copyright data or computer software first produced under the contract where such permission is necessary, *i.e.,* for works other than scientific and technical journal articles and data produced under a CRADA, and if the Government desires to obtain copyright in such data or computer

software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) *Copyrighted works (scientific and technical works).* (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific, research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) For each scientific or technical work first produced or composed under this contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the following notices below:

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This work was produced by [insert the name of the Contractor] under contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this work, or allow others to do so, for United States Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan *[insert current link].*

(End of notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan *[insert current link].*

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) *Copyrighted works (other than scientific and technical works and data produced under a CRADA).* The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, when the Contractor needs to control distribution to advance the goals of the technology transfer mission and where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.*

(i) For data other than scientific and technical works under paragraph (d) of this clause and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes;

(B) The program under which it was funded;

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement;

(D) Whether the data is subject to export control; and if so, which jurisdiction;

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, ''Technology Transfer Mission,'' within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period; and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release:

(A) Would be detrimental to national security, *i.e.,* involve classified information or data or sensitive information under section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes;

(B) Would not enhance the appropriate transfer or dissemination and commercialization of such data;

(C) Would have a negative impact on U.S. industrial competitiveness;

(D) Would prevent DOE from meeting its obligations under treaties and international agreements; or

(E) Would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written approval of the Patent

Counsel to assert copyright where data are determined to be in the following excepted categories:

(A) Under export control restrictions;

(B) Developed with Naval Reactors' funding;

(C) Subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified at DOE's Office of International Affairs (International Commitments—IEC).

If a patent application containing export-controlled information (ECI) stems from a Federally funded project, then the cognizant Federal Program Manager must approve its submittal without a secrecy order, and the NNSA Office of Nonproliferation and Arms Control must be notified in advance.

The following situations apply when patent applications containing ECI are intended to be submitted without a secrecy order.

- Any patent application containing controlled technology that falls within the scope of the International Traffic in Arms Regulations requires advance authorization from the Department of State, Directorate of Defense Trade Controls.
- Any patent application containing export-controlled technology as captured in Tier 2 as defined in NNSA Policy Letter NAP 476.1 (or successor version) must receive approval from NNSA's Office of Defense Programs.

(2) *Patent Counsel Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission automatically extends to subsequent minor versions (*e.g.,* minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) *Permission for Contractor to Assert Copyright.*

(i) For computer software, the Contractor shall furnish, or make available to the DOE Office of Scientific and Technical Information (OSTI) in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) Announcement information/metadata contained in the Software Announcement Notice 241.4;

(B) the source code and/or executable file for each software program; and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause, the Contractor shall within sixty (60) days of obtaining such permission furnish, or make available to OSTI in accordance with OSTI guidelines, a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) of this clause, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. For all previously approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright or at the end of the specified period as prescribed by Patent Counsel, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(vi) At any time the Contractor abandons commercialization activities for copyrighted data, the Contractor shall advise OSTI and Patent Counsel and, upon request, assign the copyright to the Government so that the Government can distribute the copyrighted data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals.) In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government sponsorship and license rights shall be substantially similar to the following:

Notice: These data were produced by (insert name of Contractor) under Contract No._____ with the Department of Energy. During the period of commercialization or such other time period specified by the Department of Energy, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subsequent to that period the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the data as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i) of this clause. Before licensing under this subparagraph, DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—''Appeals.''

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this clause.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) *Open software source.* The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) *DOE Program notice for copyright assertion for OSS.*

(i) The Contractor shall provide written notice (including relevant data such as, for example, the software disclosure form) to each DOE Program or Programs that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) has previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. If Program has neither consented nor objected to the assertion of copyright within two weeks of such written notification, the Contractor may assert copyright in the software. If notification of a funding DOE Program(s) is not practicable or DOE Program(s) has objected, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a CRADA, Strategic Partnership Projects (SPP), User Facility Agreement, or Agreement for Commercializing Technology (ACT), authorization from the partner of such agreement shall be additionally obtained for OSS release unless such agreement has a provision providing for such copyright assertion.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency(ies). However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) *Assert copyright in the OSS.* Once the Contractor has met the program approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, which precludes marking such OSS as protectable from public distribution.

(3) *Submit Software Announcement Notice 241.4 to OSTI.* The Contractor must submit Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to OSTI . In the AN 241.4, the Contractor shall provide the unique URL (*i.e.,* a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) *Maintain OSS record.* The Contractor must maintain a record of all software distributed as OSS. Upon request of the Patent Counsel, the

Contractor shall provide the necessary information regarding any or all OSS.

(5) *Provide public access to the OSS.* The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other standard industry methods.

(6) *Select an OSS license.* Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions—

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works. This provision may allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) *Relationship to other required clauses in the contract.* OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference, as set forth in paragraphs (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227–3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(8) *Government license.* For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(9) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(g) *Subcontracting.* (1) Unless otherwise directed by the Patent Counsel, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the DOE policy and procedures, the clause entitled, ''Rights in Data-General'' at 48 CFR 52.227–14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel. The Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of the Patent Counsel. The clause at 48 CFR 52.227–16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall use the ''Rights in Data-Facilities'' clause at 48 CFR 970.5227–1.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Limited Rights Notice'' set forth below. All such limited rights data shall be marked with the following ''Limited Rights Notice:''

Limited Rights Notice

These data contain ''limited rights data,'' furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the ''limited rights data'' may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(c) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(d) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(i) *Rights in restricted computer software.* (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the ''Restricted Rights Notice'' set forth below. All such restricted computer software shall be marked with the following ''Restricted Rights Notice:''

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice ''Unpublished-rights reserved under the Copyright Laws of the United States.''

(j) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.2704–3(b), where access to Category C–24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase ''and except Restricted Data in category C–24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology'' after ''laser isotope separation'' and before the comma in paragraph (b)(2)(ii) of the clause at 970.5227–2, Rights in Data—Technology Transfer, as appropriate.

(End of clause)

Alternate II (DATE XXXX). As prescribed in 970.2704–3(b), where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice of the basic clause:

(f) This ''limited rights data'' may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed.

(End of clause)

■ 246. Section 970.5227–3 is revised to read as follows:

§ 970.5227–3 Technology transfer mission.

As prescribed in 970.2770–4(a), insert the following clause:

Technology Transfer Mission (XXX 20XX)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (sections 3131, 3132, 3133, and 3157 of Public Law 101–189 and as amended by Public Law 103–160, sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); section 3132(b) of Public Law 101–189, sections 3134 and 3160 of Public Law 103–160, and of chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); section 102 of the Laboratory Modernization and Technology Transfer Act (Pub. L. 115–246) and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property

made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) *Trademarks and service marks.* The Contractor, with notification to DOE Patent Counsel, is authorized to protect goods/services resulting from work at the Laboratory through Trademark and Service Mark protection. The Laboratory name and associated logos are owned by the Department of Energy unless an exception is allowed by the DOE Patent Counsel, and shall be protected by DOE Patent Counsel. In furtherance of the technology transfer mission, should the Contractor want to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, the Contractor must first notify and obtain permission from the Department of Energy Patent Counsel. All marks, whether or not registered with the United States Patent and Trademark Office, are to be included in the ''Intellectual property rights'' paragraph (i) of this clause, regarding transfer to successor contractor, DOE reserves the right to require the Contractor to cancel registration of the mark or cease use of the mark.

(b) *Definitions.*

Agreements for Commercializing Technology (ACT) means any agreement pursuant to the ACT clause, if included in this M&O contract, entered into between the Contractor as operator of the Laboratory and a third party to conduct sponsored research at the M&O Contractor's risk, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract and on a fully reimbursable basis.

Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31 of the United States Code.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Intellectual property means data, inventions, patents, patent applications, trademarks, service marks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the project.

Laboratory Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

Laboratory Tangible Research Product means tangible material results of research which

(1) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(2) Are not materials generally commercially available; and

(3) Were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

Master Scope of Work (MSW) means a detailed description of a routine scope of work containing information sufficient to:

(1) Ensure that the Contractor and the cognizant Contracting Officer (CO) have a common understanding of the work to be performed;

(2) Allow DOE to make all reviews, approvals, determinations, and certifications required pursuant to relevant DOE Orders and policy; and

(3) Enable the CO and the Contractor to agree that the work is suitable for special processing as the subject of Strategic Partnership Project (SPP) agreements or Cooperative Research and Development Agreements (CRADAs) for non-Federal sponsors.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Strategic Partnership Projects (SPP) means any agreement pursuant to the SPP clause, if included in this M&O contract, entered into between the Contractor as operator of the Laboratory and a non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract and on a fully reimbursable basis.

(c) *Allowable costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining,

licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable cost provisions of this Contract.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled ''Insurance—Litigation and Claims'' of this contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-federal sponsors in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who is a current or has been a Laboratory employee within the previous two years or to the company in which the individual is a principal and the Contractor's request should include notice of any SPP, CRADA and/or ACT associated with the Intellectual Property;

(9) Notify non-Federal sponsors of SPP activities of any relevant Intellectual Property interest of the Contractor prior to execution of SPP; and

(10) Notify the Contracting Officer and DOE funding program prior to evaluating a proposal from a third party for DOE, when:

(i) The evaluator is an inventor of a Contractor invention that is the subject matter of the proposal; or

(ii) The evaluator is a principal or has financial interest in the third party; or

(iii) The third party is a licensee of the Contractor.

(e) *Fairness of Opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness for licensing and assignments of intellectual property.* (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) Whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii)(A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) In licensing or assigning any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements and has policies to protect United States Intellectual Property rights.

(C) If the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (f)(1)(ii)(B) of this clause, may rely upon the following information—

(*1*) U.S. Trade Representative Inventory of Foreign Trade Barriers;

(*2*) U.S. Trade Representative Special 301 Report; and

(*3*) Such other relevant information available to the Contracting Officer; and

(D)(*1*) The Contractor should review the U.S. Trade Representative website at: *https://www.ustr.gov* for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

(*2*) If the Contractor determines that neither of the conditions in paragraph (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(*3*) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(*4*) The Contractor agrees to be bound by paragraph (t) U.S. Competitiveness in its Patent Rights provision (*e.g., 48 CFR*

970.5227–10 or 970.5227–12 as may be modified) as applicable.

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. Except for CRADA and SPP where the guidance is already provided elsewhere, the Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 15 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for any purpose inconsistent with DOE mission direction.

(3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer. The Contractor shall notify the contracting officer of any changes to that policy, and such changes, shall be subject to the approval of the contracting officer.

(i) *Transfer to successor contractor.* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one or several packages if necessary, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) *Technology transfer affecting the national security.* (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168), as amended. Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan, which may be included in the Annual Laboratory Plan, shall be provided to the contracting officer on or before October 1st of each year.

(m) *Oversight and appraisal.* The Contractor is responsible for developing

and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology transfer through cooperative research and development agreements.* Upon approval of the contracting officer and as provided in DOE approved guidance, the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) *Review and approval of CRADAs.* (i) Except as otherwise directed in writing by the contracting officer, each JWS or MSW shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA) a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS, MSW or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS, MSW or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA or relevant MSW has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS, relevant MSW or any time thereafter.

(2) *Selection of participants.* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements. The Contractor, in considering these factors, may rely upon the information and same sources as referenced in paragraphs (f)(1)(ii)(C) and (D) of this clause;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of data.* (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced or otherwise as delineated in Stevenson-Wydler, as amended. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) A final technical report, upon completion of a CRADA, shall be provided to DOE's Office of Scientific and Technical Information; reports marked as Protected CRADA Information will not be released to the public for a period in accordance with the terms of the CRADA.

(iv) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *SPP, ACT and user facility programs.* (i) SPP, ACT and User Facility Agreements (UFAs) may be available for use by the Contractor in addition to CRADAs. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, *i.e.,* SPP, ACT and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP, ACT and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including SPP, ACT and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the negotiation, approval or performance of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(*1*) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA; or

(*2*) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the entity of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the negotiation, approval or performance of the CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of negotiation, approval or performance of the CRADA.

(o) *Technology transfer in other cost-sharing agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) *Technology partnership ombudsman.* (1) The Contractor agrees to establish a position to be known as ''Technology Partnership Ombudsman,'' to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contactor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(End of clause)

Alternate I (DATE XXXX). As prescribed in 970.2770–4(b), add the following definition and new paragraph (q):

Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(q) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity—Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (DEC 2000). As prescribed in 970.2770–4(c), the contracting officer shall substitute the phrase ''weapon production facility'' wherever the word ''laboratory'' appears in the clause.

■ 247. Amend section 970.5227–4 by revising the introductory text, clause date, and paragraph (c) to read as follows:

§ 970.5227–4 Authorization and consent.

Insert the following clause in solicitations and contracts in accordance with 970.2702–1:

Authorization and Consent (XXX 20XX)

* * * * *

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 48 CFR 52.227–1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed the simplified acquisition threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed the simplified acquisition threshold.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

* * * * *

■ 248. Amend section 970.5227–5 by:

■ a. Revising the introductory text and clause date; and

■ b. In paragraph (c), removing ''$100,000'' and adding in its place ''the simplified acquisition threshold''.

The revisions read as follows:

§ 970.5227–5 Notice and assistance regarding patent and copyright infringement.

Insert the following clause in solicitations and contracts in accordance with 970.2702–2:

Notice and Assistance Regarding Patent and Copyright Infringement (XXX 20XX)

* * * * *

■ 249. Section 970.5227–10 is revised to read as follows:

§ 970.5227–10 Patent rights—management and operating contracts, nonprofit organization or small business firm contractor.

As prescribed in 970.2703–2(a), insert the following clause:

Patent Rights—Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (XXX 20XX)

(a) *Definitions.*

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.

Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

Initial Patent Application means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United

States, or the first application for a Plant Variety Protection certificate, as applicable.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 121.3–12, respectively, are used.

Statutory Period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of Principal Rights.* (1) *Retention of title by the Contractor.* Except for exceptional circumstance subject inventions outlined in paragraph (b)(3)(i) of this clause, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at DOE's Office of International Affairs (International Commitments—IEC) (*https://energy.gov/ia/iec-documents*), or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions.

(3) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions in which the Contractor cannot retain title without specific grant of a waiver from DOE:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168); and

(D) DOE Steel Initiative and Metals Initiative.

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract related to the exceptional circumstance subject inventions subject to specific terms outlined in those declarations of exceptional circumstance, the Contractor may take title to these inventions consistent with the terms of the contract. A complete list of declarations of exceptional circumstance, which is maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(A) U.S. Advanced Battery Consortium;

(B) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);

(C) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency—Energy (ARPA–E);

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the ''Core Technology Program'';

(E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the ''Core Technology Program.''

(F) Cybersecurity, Energy Security, and Emergency Response;

(G) Quantum Information Science Technologies; and

(H) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to ''Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies'' (S&E DEC) issued June 7, 2021, must comply with paragraph (t) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional

circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304–1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor*—(1) *Subject invention disclosure.* The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written or electronic report and shall identify the contract or any other agreement under which the invention was made and the inventor(s) and all sources of funding by Budget and Resources (B&R) code for the invention. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted or made available for publication at the time of disclosure. The disclosure shall identify if the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will notify the agency of any accepted manuscript describing the invention for publication or of any on sale or public use planned by the contractor that is 60 days prior to the end of the Statutory Period. The Contractor shall notify Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding first filed patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of Patent Counsel, be granted.

(5) *Publication review.* During the course of the work under this contract, the Contractor may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. Contractor's Invention Identification Procedures under paragraph (f)(5) of this clause should address timely disclosure of inventions, consider whether review is required, and if so, facilitate such review by Contractor personnel responsible for patent matters prior to disclosure of publications in order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor.

(6) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (*e.g.,* iEdison or similar system) shall be used for reporting and approvals.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention -

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c), but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend

in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(5) Upon a breach of paragraph (t) U.S. Competitiveness of this clause.

(e) *Minimum rights of the Contractor and protection of the Contractor's right to file*—(1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation of modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest*—(1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The contractor will notify the Patent Counsel of any decision not to file a patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 60 days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, ''This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention.''

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Patent filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 401.

(g) *Subcontracts*—(1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 37 CFR 401.14 with Alternate I of 48 CFR 952.227–11, Patent Rights—Retention by the Contractor, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 37 CFR 401.3(a) and 401.14. If the S&E DEC, or any other applicable DEC, is applicable (see subparagraph (b)(6)(iii) of this clause), the Contractor shall use Alternate II of DEAR 952.227–11, Patent Rights—Retention by the Contractor.

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to a patent waiver granted by DOE Patent Counsel, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause which may require the use of Alternate II of 48 CFR 952.227–11.

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that includes the number of patent applications filed, the number of patents issued, licensing activity, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right under 35 U.S.C. 203 and in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself under applicable law stated above.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that

Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports*—(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period under which a subject invention was reported, or a statement that no such subject inventions under subcontracts were reported during the contract performance period.

(n) *Examination of Records Relating to Subject Inventions*—(1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility.

(1) To practice or have practiced by or for the Government at the facility; and

(2) To transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy*—(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified inventions*—(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) U.S. Competitiveness. Notwithstanding 48 CFR 970.5227–3(f), U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to

provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign, or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s):

(1) Undergo a change in ownership amounting to a controlling interest; or

(2) Sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(u) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(v) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of clause)

Alternate 1 Weapons Related Subject Inventions. As prescribed at 970.2703–2(g), insert the following definition in paragraph (a) and add subparagraph (b)(7), respectively:

(a) *Definitions. Weapons related subject invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of Principal Rights*—(7) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(End of alternate)

■ 250. Amend section 970.5227–11 by:

■ a. Revising the introductory text, clause heading and date, and paragraphs (a), (c)(2) introductory text, (c)(2)(vii), (c)(5), and (f)(3); and

■ b. Adding paragraph (o).

The revisions and addition read as follows:

§ 970.5227–11 Patent rights—management and operating contracts, for-profit contractor, no patent waiver.

As prescribed in 970.2702–2(b), insert the following clause:

Patent Rights—Management and Operating Contracts, For-Profit Contractor, No Patent Waiver (XXX 20XX)

(a) *Definitions.*

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Patent counsel means DOE Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

* * * * *

(c) * * *

(2) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

* * * * *

(vii) All sources of funding by Budget and Resources (B&R) code. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers; and

* * * * *

(5) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer. Whenever possible in this paragraph (c), the Government electronic reporting system (*e.g.,* iEdison or similar system) may be used for reporting and approvals.

* * * * *

(f) * * *

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable patent waiver granted by DOE Patent Counsel, in any contract for experimental, developmental, demonstration or research work.

* * * * *

(o) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related

information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

* * * * *

■ 251. Section 970.5227–12 is revised to read as follows:

§ 970.5227–12 Patent rights—management and operating contracts, for-profit contractor, patent waiver.

As prescribed in 970.2703–2(c), insert the following clause:

Patent Rights—Management and Operating Contracts, For-Profit Contractor, Patent Waiver (XXX 20XX)

(a) *Definitions.*

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR part 781.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.

Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

Initial Patent Application means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Patent counsel means DOE Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

Subject invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) *Allocation of principal rights*—(1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) *Advance class waiver of Government rights to the contractor.* DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, paragraph (t) U.S. Competitiveness of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) *Government license.* With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) *Foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at DOE's Office of International Affairs (international Commitments—IEC) (*https://energy.gov/ia/.iec-documents*), or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions.

(6) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions in which the Contractor cannot retain title without specific grant of a waiver from DOE:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under section 148 of the Atomic Energy Act (42 U.S.C. 2168); and

(D) DOE Steel Initiative and Metals Initiative.

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract related to the exceptional circumstance subject inventions subject to specific terms outlined in those declarations of exceptional circumstance, the Contractor may take title to these inventions consistent with the terms of this contract. A complete list of declarations of exceptional circumstance, which is maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(A) U.S. Advanced Battery Consortium;

(B) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);

(C) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency—Energy (ARPA–E);

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the ''Core Technology Program'';

(E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the ''Core Technology Program.''

(F) Cybersecurity, Energy Security, and Emergency Response;

(G) Quantum Information Science Technologies; and

(H) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to ''Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies'' (S&E DEC) issued 6/7/2021 must comply with paragraph (t) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) Exceptional circumstances subject inventions are as set forth in the applicable patent waiver. In addition, DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

(7) *Contractor request for greater rights.* The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) *Government assignment of rights in Government employees' subject inventions.* If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304–1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee.

(c) *Subject invention disclosure, election of title, and filing of patent application by Contractor*—(1) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written or electronic report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code. The funding program may require other invention identifiers such as related award numbers or funding opportunity announcement numbers; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Strategic Partnership Projects agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions

disclosed to DOE under this paragraph are deemed made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) *Election by the Contractor under an advance class waiver.* If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the statutory period.

(4) *Filing of patent applications by the Contractor under an advance class waiver.* If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any statutory period, whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) *Submission of patent information and documents.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) *Contractor's request for an extension of time.* Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR part 40.

(8) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (*e.g.,* iEdison or similar system) may be used for reporting and approvals.

(d) *Conditions when the Government may obtain title notwithstanding an advance class waiver*—(1) *Return of title to a subject invention.* If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or (7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (3) of this clause.

(3) *Failure to file domestic or foreign patent applications.* In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) *Discontinuation of patent protection by the Contractor.* If the Contractor decides to not file a non-provisional application, or to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) *Termination of advance class waiver.* DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (v) of this clause.

(6) Upon a breach of paragraph (t) U.S. Competitiveness of this clause.

(e) *Minimum rights of the Contractor*—(1) *Request for a Contractor license.* Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the

Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) *Transfer of a Contractor license.* Contractor must obtain DOE approval of any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) *Revocation or modification of a Contractor license.* DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(4) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(f) *Contractor action to protect the Government's interest*—(1) *Execution and delivery of title or license instruments.* The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) Establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) Convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) Enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) *Notification of discontinuation of patent protection.* With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than 60 days before the expiration of the response period for any action required by the corresponding patent office.

(5) *Notification of Government rights.* With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, ''This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention.''

(6) *Avoidance of royalty charges.* If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) *DOE approval of assignment of rights.* Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) *Small business firm licensees.* The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) *Subcontracts*—(1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) *Inclusion of patent rights clause—non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 37 CFR 401.14, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to

exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (m) U.S. Competitiveness. Additionally, the following item (4) must be added to paragraph (d) of the subcontractor's patent clause ''(4) Upon a breach of paragraph (m) U.S. Competitiveness of this clause.''

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations or small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13, suitably modified to identify the parties and any applicable patent waiver granted by DOE Patent Counsel, in any contract for experimental, developmental, demonstration or research work. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (n) U.S. Competitiveness. Additionally, the following must be appended to the first sentence paragraph of (d)(1) ''or upon a breach of paragraph (n) U.S. Competitiveness of this clause.''

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) *Reporting on utilization of subject inventions.* Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that included the number of patent applications filed, the number of patents issued, licensing activity, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-In rights.* With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself under the patent waiver.

(k) *Communications.* The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) *Reports*—(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) *Facilities License.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to

any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility:

(1) To practice or have practiced by or for the Government at the facility; and

(2) To transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) *Atomic energy*—(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) *Classified inventions*—(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) *Records relating to inventions*—(1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) *Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) *U.S. Competitiveness.* Notwithstanding 48 CFR 970.5227–3(f), U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(u) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor. At the discretion of the Patent Counsel, authority to review publications prior to release may be delegated to the Contractor.

(v) *Termination of contractor's advance class waiver.* If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this

clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

(w) *Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

(End of clause)

Alternate 1 Weapons Related Subject Inventions. As prescribed at 970.2703–2(g), insert the following definition in paragraph (a) and add subparagraph (b)(10) respectively:

(a) *Definitions.*

Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of Principal Rights.* (10) *Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(End of alternate)

■ 252. Section 970.5232–2 is revised to read as follows:

§ 970.5232–2 Payments and advances.

As prescribed in 970.3270(a)(1), insert the following clause:

Payments and Advances (XXX 20XX)

(a) *Installments of fixed-fee.* The fixed-fee payable, if applicable, under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.

(b) *Payments on Account of Allowable Costs.* The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds.

(c) *Timing of payments.* Funds for payments of allowable costs, including payments for pension plan contributions, shall be drawn from the special financial institution account when those payments are made, not when the costs are accrued.

(d) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix—''_____''. The contractor will follow current procedures and requirements for establishing and managing the special financial institution account that are stated in the Department's Financial Management Handbook and relevant Department of Treasury rules.

(e) *Use of the special financial institution account for unallowable costs.* Government funds in the special financial institution account shall be used only for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer.

(f) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(g) *Financial settlement.* The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—

(1) Compliance by the Contractor with DOE's patent clearance requirements; and

(2) The furnishing by the Contractor of—

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled ''Property''; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues.

In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see Contract Clause, 48 CFR 970.5228–1, Insurance—Litigation and Claims);

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(i) Any claim which the Government may have against the Contractor in connection with this contract; and

(ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due, and any balance shall be returned to the Government forthwith.

(h) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(i) *Discounts.* The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(j) *Collections.* All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(k) *Direct payment of charges.* The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor.

(l) *Determining allowable costs.* Regardless of contractor type, the Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.3270(a)(1)(i), if a separate fixed-fee is provided for a separate item of work, paragraph (a) of the basic clause should be modified to permit payment of the entire fixed-fee upon completion of that item.

Alternate II (DATE XXXX). As prescribed in 970.3270(a)(1)(ii), when total available fee provisions are used, replace paragraph (a) of the basic clause with the following paragraph (a):

(a) *Payment of Total available fee: Base Fee and Performance Fee.* (1) The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled ''Total Available Fee: Base Fee Amount and Performance Fee Amount.'' Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.

(2) *Provisional fee.* Additionally, if the Contracting Officer authorizes provisional payment of fee and for only as long as the Contracting Officer authorizes it, the Contractor may withdraw from funds advanced on the last working day of each month a provisional fee equal to 6 percent of the annual total available fee amount. The Contracting Officer may for any reason withdraw his/her authorization allowing the Contractor's withdrawal of provisional fee if at any time in his/her judgement the Contractor will not earn the provisional fee. The Contracting Officer's decision to authorize the Contractor's withdrawal of provisional fee or to withdraw such authorization is solely within the Contracting Officer's discretion. Following the Government's determination of total available fee amount earned, the Contractor may withdraw from funds advanced the amount by which earned fee exceeds provisional fee; and must immediately return to funds advanced the amount by which provisional fee exceeds earned fee.

(End of alternate)

Alternate III (DATE XXXX). As prescribed in 970.3270(a)(1)(iii), the following paragraph (k) shall be included in management and operating contracts with integrated accounting systems: (k) *Review and approval of costs incurred.* The Contractor shall prepare and submit annually as of September 30, a ''Statement of Costs Incurred and Claimed'' (Cost Statement) for the total of net expenditures accrued (*i.e.,* net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 308), as amended, and the False Claims Act (31 U.S.C. 3279, *et seq.*). DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

(End of alternate)

Alternate IV (DATE XXXX). As prescribed in 970.3270(a)(1)(iv), the following paragraph (k) shall be included in management and operating contracts without integrated accounting systems:

(k) *Certification and penalties.* The Contractor shall prepare and submit a ''Statement of Costs Incurred and Claimed'' (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the Contracting Officer. The

Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 308), as amended.

(End of alternate)

■ 253. Amend section 970.5232–3 by revising the clause date and paragraphs (a), (c), and (h)(1) to read as follows:

§ 970.5232–3 Accounts, records, and inspection.

* * * * *

Accounts, Records, and Inspection (XXX 20XX)

(a) *Accounts.* The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

* * * * *

(c) *Audit of subcontractors' incurred costs.* If the subcontractor's incurred costs are a factor in determining the amount the Contractor pays the subcontractor and submits to the Government for reimbursement, the Contractor shall: perform a sufficient amount of audit work (that the Contractor's auditor or the Contracting Officer agrees is sufficient) of its subcontractor's incurred costs to provide reasonable assurance the costs are allowable; or arrange for an audit by the cognizant government audit agency through the Contracting Officer of its subcontractor's incurred costs.

* * * * *

(h) * * *

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.

* * * * *

■ 254. Section 970.5232–5 is amended by revising the introductory text to read as follows:

§ 970.5232–5 Liability with respect to cost accounting standards.

As prescribed in 970.3270(a)(4), insert the following clause:

* * * * *

■ 255. Section 970.5232–6 is amended by revising the introductory text to read as follows:

§ 970.5232–6 Strategic partnership project funding authorization.

As prescribed in 970.3270(a)(5), insert the following clause:

* * * * *

■ 256. Section 970.5232–7 is revised to read as follows:

§ 970.5232–7 Financial management system.

As prescribed in 970.3270(b)(1), insert the following clause:

Financial Management System (XXX 20XX)

(a) The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements. In addition, the Contractor shall maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal entities, as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies. The financial system will also permit the proper allocation of costs to separately funded activities consistent with Cost Accounting Standards (CAS), as defined by 48 CFR part 9900 and any implementing DOE policies, and ensures that accountability for the assets can be maintained.

(b) The Contractor shall submit to the Contracting Officer for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial changes to the plan and, as requested by the Contracting Officer, shall submit any such changes to the Contracting Officer for written approval before implementation.

(End of clause)

■ 257. Amend section 970.5235–1 by revising the clause heading and date and paragraphs (c) and (d) to read as follows:

§ 970.5235–1 Federally funded research and development center sponsoring agreement.

* * * * *

Federally Funded Research and Development Center Sponsoring Agreement (XXX 20XX)

* * * * *

(c) Unless otherwise provided by the contract, the Contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of 48 CFR 970.3501, and the clause at 48 CFR 970.5217–1, Strategic Partnership Projects Program. Only the Contracting Officer can place work on the contract; and obligate the Government to reimburse the contractor for the work.

(d) As an FFRDC, the Contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1, Strategic Partnership Projects (Non-Department of Energy Funded Work)), or its successor version.

* * * * *

■ 258. Amend section 970.5244–1 by revising the clause date and paragraphs (a), (c), (e), (f), (h)(1), (l), (w), and (x) to read as follows:

§ 970.5244–1 Contractor purchasing system.

* * * * *

Contractor Purchasing System (XXX 20XX)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401–1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's obligations include, among other things, retaining documentation to justify the cost on any flexibly priced subcontract or any subcontract with a flexibly priced element. DOE reserves the right at any time to require that the Contractor submit for approval any or all subcontracts or purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and

directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the Contractor's purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals shall be performed against the criteria and measures set forth in 48 CFR part 44, subpart 44.3. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

* * * * *

(c) *Acquisition of real property.* Real estate or real property interests shall be acquired in accordance with 48 CFR part 917, subpart 917.74.

* * * * *

(e) *Audit of subcontractors.* (1) The Contractor shall provide for—

(i) Periodic post-award audit—or a sufficient amount of audit work (that the Contractor's auditor or the Contracting Officer agrees is sufficient)—to provide reasonable assurance that all claimed subcontract costs are allowable for: flexibly priced subcontracts at all tiers; and the flexibly priced elements in any subcontracts at all tiers (''flexibly priced'' subcontracts and elements include Cost-Reimbursement subcontracts, Time-and-Materials subcontracts, cost-reimbursement elements in Fixed-Priced contracts, etc.); and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely joint involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability. In no case, however, shall the Contractor's subcontract audit arrangements preclude the Contracting Officer's determination of the allowability or unallowability of the subcontract costs the Contractor claims for reimbursement.

(3) Where audits of subcontractors at any tier are required, the Contractor shall consult with the DOE Contracting Officer on the best approach for obtaining an audit; this may involve employing external auditors. The Contractor shall interact with the cognizant Federal agency in a manner appropriate to the magnitude and nature of the subcontracted work. In no case, however, shall subcontractor auditing arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402–3 and 31.205–26(e).

(f) *Bonds and insurance.* (1) The Contractor shall require performance bonds in amounts as set forth in 48 CFR 28.102–2(b) for all fixed-priced and unit-priced construction subcontracts in excess of $150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The amounts shall be determined in accordance with 48 CFR 28.102–2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $35,000, but not greater than $150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102–1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

* * * * *

(h) * * *

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted that is expected to exceed the simplified acquisition threshold.

* * * * *

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Head of the Contracting Activity, in consultation with local legal counsel.

* * * * *

(w) *Unclassified controlled nuclear information.* Subcontracts involving unclassified controlled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract flowdown requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Construction Wage Rate requirements, formerly known as Davis-Bacon, clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247–70.

(3) Counterintelligence clause prescribed in 48 CFR 904.404(d)(7).

(4) Service Contract Labor Standards, formerly known as Service Contract Act, clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904–1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504–2–1.

(7) Workforce Restructuring and Displaced Employee Hiring Preference clause prescribed in 48 CFR 970.2672–3.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) Contract Work Hours and Safety Standards—Overtime Compensation as prescribed in 48 CFR 22.305.

(10) Paid Sick leave under Executive Order 13706 as prescribed in 48 CFR 22.2110.

(11) Collective Bargaining Agreements Management and Operating Contracts as prescribed in 48 CFR 970.2201–1–3.

(12) Workplace Substance Abuse Programs at DOE Sites as prescribed in 48 CFR 970.2305–4.

(13) Contracts for Materials, Supplies, Articles, and Equipment clause prescribed in 48 CFR 22.610.

* * * * *

■ 259. Section 970.5245–1 is revised to read as follows:

§ 970.5245–1 Property.

As prescribed in 970.4501–2, insert the following clause:

Property (XXX 20XX)

(a) *Application of regulations.* The Contractor shall comply with the requirements in 41 CFR chapters 102 and 109 in addition to this clause.

(b) *Furnishing of Government property.* The Government reserves the

right to furnish any property or services required for the performance of the work under this contract.

(c) *Title to property.* Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon:

(1) Issuance for use of such property in the performance of this contract; or

(2) Commencement of processing or use of such property in the performance of this contract; or

(3) Reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personal property by reason of affixation to any realty.

(d) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(e) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(f) *Protection of government property—management of high-risk property and classified materials.* (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(g) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property and classified materials; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with 41 CFR chapter 109.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in this clause is not allowable.

(h) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor -

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof;

(2) Shall take all reasonable steps to protect the property remaining; and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the

right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(i) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(j) *Property Management*—(1) *Property Management System.* (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by ''best in class'' performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(k) The term ''contractor's managerial personnel'' as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business; or

(2) All or substantially all of the Contractor's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(l) The Contractor shall include this clause in all cost reimbursable subcontracts.

(End of clause)

Alternate I (DATE XXXX). As prescribed in 970.4501–2, when the award is to a nonprofit contractor, replace paragraph (k) of the basic clause with the following paragraph (k):

(k) The term ''contractor's managerial personnel'' as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor's business; or

(2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The Contractor's Government property system and/or a Major System Project as defined in DOE Order 413.3B, or successor version (Version in effect on effective date of contract).

[FR Doc. 2023–16875 Filed 10–25–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 88 Thursday,
No. 206 October 26, 2023

Part III

The President

Notice of October 24, 2023—Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

Federal Register
Vol. 88, No. 206
Thursday, October 26, 2023

Presidential Documents

Title 3—

The President

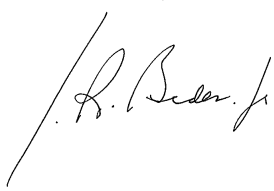
Notice of October 24, 2023

Continuation of the National Emergency With Respect to the Democratic Republic of the Congo

On October 27, 2006, by Executive Order 13413, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability. The President took additional steps to address this national emergency in Executive Order 13671 of July 8, 2014.

The situation in or in relation to the Democratic Republic of the Congo continues to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13413 of October 27, 2006, as amended by Executive Order 13671 of July 8, 2014, must continue in effect beyond October 27, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo declared in Executive Order 13413, as amended by Executive Order 13671.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 24, 2023.

[FR Doc. 2023–23843
Filed 10–25–23; 11:15 am]
Billing code 3395–F4–P

Reader Aids

Federal Register

Vol. 88, No. 206

Thursday, October 26, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

67617–67928 2
67929–68422 3
68423–69002 4
69003–69528 5
69529–69872 6
69873–70336 10
70337–70564 11
70565–70884 12
70885–71272 13
71273–71458 16
71459–71724 17
71725–71986 18
71987–72346 19
72347–72674 20
72675–72964 23
72965–73212 24
73213–73526 25
73527–73754 26

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:

1 69390
25 69390
175 69390
180 69390
182 69390
183 69390
184 69390
200 69390

3 CFR

Proclamations:

10633 68423
10634 68425
10635 68427
10636 68429
10637 68431
10638 68433
10639 68435
10640 68437
10641 68439
10642 68441
10643 68445
10644 70337
10645 70565
10646 70567
10647 70569
10648 70571
10649 70573
10650 70577
10651 71263
10652 71265
10653 71725
10654 71727
10655 71729
10656 73213
10657 73527

Executive Orders:

14031 (amended by 14109) 68447
14048 (superseded in part by 14109) 68447
14084 (amended by 14109) 68447
14109 68447

Administrative Orders:

Memorandums:
Memorandum of September 21, 2023 70563
Memorandum of September 27, 2023 67617
Notices:
Notice of October 12, 2023 71271
Notice of October 17, 2023 72345
Notice of October 24, 2023 73753
Presidential Determinations:
No. 2023–13 of September 29, 2023 73521
No. 2023–14 of September 29, 2023 73523

5 CFR

2424 ..... 69873, 70579, 71731

Proposed Rules

2412 70374

7 CFR

2 70579
27 69529
52 71459
407 71731
457 ..... 70339, 71731
932 69873
956 69876
981 67621
989 71273
1710 71987
1779 71987
1780 71987
1783 71987
1942 71987
1980 71987
3434 71275
3570 71987
4274 71987
4279 71987
4280 71987

Proposed Rules:

51 70379
927 69888
981 68500
993 70608
1240 ..... 71302, 71306
3550 69099
3555 69099
3560 73245

8 CFR

Proposed Rules:

214 72870

10 CFR

50 71277
52 71277
72 67929
140 71988
429 ..... 70580, 71990, 73215
431 ..... 69686, 70580, 71990, 72347, 73215

Proposed Rules:

Ch. I 69555
20 68506
30 68506
50 71777
51 68506
52 71777

44 CFR

Proposed Rules:
Ch. I 67697
9 67870

45 CFR

102 .....69531, 70363

Proposed Rules:
147 68519
205 67697
260 67697
261 67697
263 67697
410 68908
1638 73303
2520 69604
2521 69604
2522 69604

46 CFR

11 67966
175 69043

Proposed Rules:
10 68042

47 CFR

8 .....69883, 73534
20 70891
54 67654
64 71994
73 .....71490, 72968, 73233, 73535, 73536

Proposed Rules:
27 72985
73 .....68557, 72417

48 CFR

Ch. 1 69502
1 69503
3 69517
4 69503
9 69503
13 69503
19 69523
31 69517
39 69503
52 .....69503, 69517, 69525
201 73234
202 73234
203 73234
205 73234
206 73234
207 73234
208 73234
209 73234
212 73238
215 73234
217 73234
219 73234
222 73234
225 .....73234, 73238, 73240
230 73234
231 73234
232 73234
236 73234
242 73234
243 73234
249 73234
250 73234
252 .....73234, 73238, 73241
1801 69883
1812 70897
1813 70897
1816 70897
1819 .....69883, 70897
1823 70897
1832 70897
1852 .....69883, 70897

Proposed Rules:
Ch. 2 73306
Ch. 9 73644
1 .....68055, 68402
2 .....68055, 68402
4 .....68055, 68402
7 .....68055, 68402
10 .....68055, 68402
11 .....68055, 68402
12 .....68055, 68402
19 68067
37 68402
39 .....68055, 68402
52 .....68055, 68402
1831 67720
1852 67720

49 CFR

217 70712
218 70712
229 70712
299 70712
390 70897
803 69043
1540 73537

Proposed Rules:
350 72727
365 72727
385 72727
386 72727
387 72727
395 72727
672 73573

50 CFR

17 .....69045, 69074, 71491, 71644
217 72562
300 69068
622 .....68495, 68496, 68497, 69553
635 .....67654, 70605
648 .....68498, 70606, 70909, 71504, 73243
660 67656
665 .....67984, 69554
679 .....67666, 67985, 67986, 71775, 72007, 73244
697 67667

Proposed Rules:
17 .....68070, 68370, 70634, 71520
218 68290
223 71523
600 .....72038, 72314
622 .....67721, 71812
665 71523
679 72314

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**.

Last List October 10, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__*layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.