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Title 3—

The President

Proclamation 10674 of November 15, 2023

National Rural Health Day, 2023

By the President of the United States of America

A Proclamation

America's rural communities are indispensable to who we are as a Nation, where over 60 million people who live in rural America fuel our economy and help forge our future. On National Rural Health Day, we recommit to investing in rural communities and delivering affordable, quality health care so that generations of rural Americans can thrive.

No one should have to lie awake at night wondering if they can afford or access health care for their family, but that is the reality for so many in rural America. Rural Americans are more likely to live in poverty, be older, and have disabilities while also having fewer health care providers within reach. We know that when rural Americans do not have the chance to thrive in their local economy, they leave home in search of opportunity elsewhere. When they do, small businesses, schools, and rural hospitals suffer, and the services and support systems people need to succeed disappear. Since 2010, over 150 rural hospitals have either closed down or stopped providing in-patient care, damaging rural economies where hospitals are often one of the largest employers and leaving families scrambling for health care.

When I came into office, I was committed to investing in rural America, starting with the health and well-being of its residents. Our American Rescue Plan directed $8.5 billion to rural providers so they could keep hospitals and clinics open during the pandemic. We also supported the establishment of a new Rural Emergency Hospital designation, which provides struggling rural hospitals with a new option for maintaining a presence within the community. We have provided $1.5 billion in scholarships and student loan assistance for rural clinicians and nurses so that medical personnel can fill these critical roles.

My Administration has also worked to modernize and support rural health care facilities by providing millions of dollars to provide direct health services, expand infrastructure, and supply technical assistance to rural hospitals facing financial distress. Further, we have made historic investments in the expansion of rural broadband and services that can be delivered via telehealth to Medicare beneficiaries.

We are also tackling some of the health crises that impact rural communities by working to improve maternal health, address the mental health crisis, and beat the opioid epidemic. My Administration's Blueprint for Addressing the Maternal Health Crisis lays out our vision for making America the best country in the world to have a baby. Expanding mental health and substance use disorder services remains a core pillar of my Unity Agenda. That is why we are recruiting, training, and supporting more providers across the country as part of the largest-ever investment in these types of programs.

Additionally, we are investing in the next generation of rural Americans, fighting for a future where all children have the resources they need to live full and healthy lives. That is why my Administration released a national strategy to end hunger and reduce diet-related diseases in America by 2030—including advancing a pathway to provide free, healthy school meals for

all children. We are also working to support schools in sourcing more local food for on-campus meals, bringing new revenue to farms and increased economic development in rural communities.

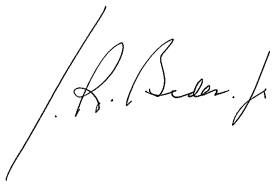
At the same time, we are lowering health care costs for every American, no matter their zip code. We expanded health care coverage through the Affordable Care Act, saving millions of families up to $800 a year on their health care premiums. I also signed the Inflation Reduction Act, which capped the cost of insulin at $35 per month for people with Medicare. The Inflation Reduction Act also empowered Medicare to negotiate lower drug prices for the first time in American history. The first ten drugs Medicare selected for negotiation treat everything from blood clots to cancer and are used by nine million people. Building on this progress, we are also requiring prescription drug companies to reimburse Medicare if they raise prices for seniors at a higher rate than inflation, which will save some seniors as much as $618 on every dose of their medication.

Finally, my Administration is implementing historic legislation that will help rural Americans find more opportunities in their hometowns. Through my Bipartisan Infrastructure Law, rural Americans are being hired to rebuild safer bridges, roads, and highways in their own communities and to bring clean water, clean energy, and high-speed internet to their neighbors. Companies are investing hundreds of billions of dollars to create thousands of jobs across America—including rural America—and are manufacturing more products in rural communities.

I have often said that health care is a right, not a privilege. On National Rural Health Day, we recommit to this principle and to putting affordable, quality health care within reach of all rural Americans.

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 November 16, 2023, as National Rural Health Day. I call upon the people of the United States to reaffirm our dedication to the health and well-being of rural America.

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



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Rules and Regulations

Federal Register

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Monday, November 20, 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.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2023–0131]

RIN 3150–AL03

List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, Certificate of Compliance No. 1004, Renewed Amendment No. 18

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of December 18, 2023, for the direct final rule that was published in the **Federal Register** on October 3, 2023. This direct final rule amended the TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 18 to Certificate of Compliance No. 1004.

DATES: The effective date of December 18, 2023, for the direct final rule published October 3, 2023, (88 FR 67929), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2023–0131 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–2023–0131. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Renewed Amendment No. 18 of Certificate of Compliance No. 1004 and associated changes to the Technical Specifications, and safety evaluation report can also be viewed in ADAMS under Package Accession No. ML23293A298.
- *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, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rodnika Murphy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7153, email: *Rodnika.Murphy@nrc.gov;* and Christian Jacobs, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6825, email: *Christian.Jacobs@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On October 3, 2023 (88 FR 67929), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to the TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 18 to Certificate of Compliance (CoC) No. 1004. Renewed Amendment No. 18 amends the certificate of compliance to:

- provide a 24PTH improved basket design (Type 3) using staggered plates similar to EOS–37PTH to simplify construction, reduce weight, and improve fabricability;
- delete Appendix A inspections, tests, and evaluations requirement for initial horizontal storage module delta temperature measurement with a loaded dry shielded canister (DSC);
- clarify Appendix B technical specification (TS) Section 4.3.2 language related to transfer casks with liquid neutron shields regarding the OS197L transfer cask (TC), which is significantly different than other TC models;
- update Appendix C American Society of Mechanical Engineers (ASME) Code Alternatives Table C–12 to add code alternative NG–4231.1;
- clarify in Appendix B TS LCO 3.1.3 that there is no transfer time limit associated with the 24PTH–S–LC DSC, consistent with existing updated final safety analysis report analysis;
- incorporate administrative controls during short duration independent spent fuel storage installation handling operations that are unanalyzed for tornado hazards in accordance with the guidance contained in NRC EGM 22–001, ''Enforcement Discretion for Noncompliance of Tornado Hazards Protection Requirements at Independent Spent Fuel Storage Installations''; and
- change the horizontal storage module concrete, to allow use of different cement, which is a blended Portland cement meeting the requirements of the American Society for Testing and Materials C595 standard.

This amendment also includes an editorial correction to the certificate of compliance name/address information by adding a missing space between 7160 and Riverwood Drive.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on December 18, 2023. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: November 15, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–25641 Filed 11–17–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1707; Project Identifier MCAI–2023–00605–T; Amendment 39–22591; AD 2023–22–07]

RIN 2120–AA64

Airworthiness Directives; Deutsche Aircraft GmbH (Type Certificate Previously Held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Deutsche Aircraft GmbH Model 328–100 airplanes. This AD was prompted by a report of finding cracks in fuselage frames (FR) 24 and FR26. This AD requires a one-time detailed and eddy current inspection of fuselage FR24 and FR26 (left and right sides), performing corrective actions if necessary, and reporting the inspection results, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1707; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1707.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3228; email *todd.thompson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Deutsche Aircraft GmbH Model 328–100 airplanes. The NPRM published in the **Federal Register** on August 14, 2023 (88 FR 54939). The NPRM was prompted by AD 2023–0081, dated April 18, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0081) (also referred to as the MCAI). The MCAI states a report of finding cracks in fuselage frames FR24 and FR26. Investigation of the root cause for cracking is ongoing. This condition, if not detected and corrected, could lead to failure of load carrying structural elements, possibly resulting in reduced integrity of the fuselage.

In the NPRM, the FAA proposed to require a one-time detailed and eddy current inspection of fuselage FR24 and FR26 (left and right sides), performing corrective actions if necessary, and reporting the inspection results, as specified in EASA AD 2023–0081. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1707.

Discussion of Final Airworthiness Directive

Comments

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

Additional Changes to This AD

The FAA added paragraph (h)(5) of this AD to clarify that any cracks found during the required inspections must be repaired before further flight. The FAA has determined that, because of the safety implications and consequences associated with that cracking, any cracking in the fuselage FR24 and FR26 must be repaired before further flight.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0081 specifies procedures for a one-time detailed and eddy current inspection of fuselage FR24 and FR26 (left and right sides) for damage (cracks). Depending on the inspection results, EASA AD 2023–0081 also specifies corrective action, including obtaining and following instructions for crack repair. EASA AD 2023–0081 also requires reporting the inspection results to Deutsche Aircraft GmbH. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
22 work-hours × $85 per hour = $1,870	$0	$1,870	$39,270

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–07 Deutsche Aircraft GmbH (Type Certificate Previously Held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–22591; Docket No. FAA–2023–1707; Project Identifier MCAI–2023–00605–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Deutsche Aircraft GmbH (Type Certificate Previously Held by 328 Support Services GmbH; AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of finding cracks in fuselage frames (FR) 24 and FR26. The FAA is issuing this AD to address cracks in FR24 and FR26. The unsafe condition, if not addressed, could result in failure of load carrying structural elements, possibly resulting in reduced integrity of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0081, dated April 18, 2023 (EASA AD 2023–0081).

(h) Exceptions to EASA AD 2023–0081

(1) Where EASA AD 2023–0081 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0081 refers to a compliance time of ''within 1,500 flight cycles (FC) or during accomplishment of Deutsche Aircraft GmbH Dornier 328 Maintenance Review Board Report (MRBR) task 53–41–37–02, whichever occurs first after the effective date of this AD.'' for this AD replace those words with ''within 1,500 flight cycles after the effective date of this AD.''

(3) Where paragraph (2) of EASA AD 2023–0081 refers to ''damages,'' for this AD damages are any cracks, including surface cracks.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0081.

(5) Where paragraph (2) of EASA AD 2023–0081 specifies ''before next flight, contact Deutsche Aircraft GmbH for approved repair instructions, and within the compliance time indicated therein, accomplish the repair accordingly, including any post-repair maintenance actions'' this AD requires replacing those words with ''repair cracking before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Deutsche Aircraft GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Any post-repair maintenance actions must be done at the time specified in the approved instructions.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

For more information about this AD, contact Todd Thompson, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3228; email *todd.thompson@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0081, dated April 18, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0081, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website: *ad.easa.europa.eu.*

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

(5) You may view this 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 30, 2023.

Victor Wicklund,

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

[FR Doc. 2023–25504 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1720; Project Identifier MCAI–2023–00003–R; Amendment 39–22598; AD 2023–22–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA–365C1, SA–365C2, and SA–365N helicopters. This AD was prompted by reports of damaged control rod dual bearings (dual bearings) that are installed on the tail rotor gearbox (TGB). This AD requires repetitively inspecting the TGB magnetic plug for particles, analyzing any particles collected, taking corrective actions if necessary, and reporting certain information. Finally, this AD allows an affected dual bearing to be installed on a helicopter if certain actions are accomplished, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1720; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1720.

Other Related Service Information: For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of EASA ADs with the most recent being EASA AD 2023–0001, dated January 4, 2023 (EASA AD 2023–0001), to correct an unsafe condition on Airbus Helicopters Model SA 365 C1, SA 365 C2, SA 365 C3, and SA 365 N helicopters, all manufacturer serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model SA–365C1, SA–365C2, and SA–365N helicopters. The NPRM published in the **Federal Register** on September 1, 2023 (88 FR 60402). The NPRM was prompted by reports of damaged dual bearings that are installed on the TGB. The NPRM proposed to require repetitively inspecting the TGB magnetic plug for particles, analyzing any particles collected, taking corrective actions if necessary, and reporting certain information. The NPRM also proposed to allow installing an affected dual bearing on a helicopter if certain actions are accomplished, as specified in EASA AD 2023–0001.

The FAA is issuing this AD to inspect for particles in the TGB magnetic plug. The unsafe condition, if not addressed, could result in loss of yaw control and subsequent loss of control of the helicopter. See EASA AD 2023–0001 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for clarifying the conditions that could exist after performing a metallurgical analysis in paragraph (h)(17) of this AD and minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0001 requires continuing close monitoring for certain helicopters and analyzing any particles collected during required inspections, repetitively inspecting the magnetic plug of the TGB for particles, and corrective actions. Corrective actions include replacing or repairing an affected TGB; sending certain information and affected parts to the manufacturer; accomplishing a metallurgical analysis; and replacing an affected dual bearing and other affected parts.

Additionally, EASA AD 2023–0001 requires for certain helicopters with an affected dual bearing installed, performing a one-time inspection of the dual bearing.

EASA AD 2023–0001 allows a dual bearing part number (P/N) 360A33–4052–00 installed on a control rod of a TGB P/N 365A33–4000–00, 365A33–4000–01, 365A33–4000–02, or 365A33–5000–00 to be installed on an aircraft, if certain requirements are met.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–05.00.83 and Airbus Helicopters ASB No. SA365–05.35, both Revision 0, and both dated February 7, 2022. This service information specifies procedures to inspect the magnetic plug of the TGB for particles; analyze and define the particles collected; replace an affected TGB and an affected dual bearing; perform a metallurgical analysis; and report certain information to the manufacturer.

The FAA also reviewed Airbus Helicopters ASB No. AS365–65.00.20 Revision 0, dated November 23, 2022. This service information specifies procedures for a one-time inspection of a certain dual bearing and replacement of the dual bearing if any particles are found.

Additionally, the FAA reviewed Airbus Standard Practices Manual, 20–08–01–601, Periodical monitoring of lubricating oil checking elements, dated July 7, 2020. This service information specifies procedures for analyzing collected particles.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Differences Between This AD and the EASA AD

EASA AD 2023–0001 applies to Airbus Helicopters Model SA 365 C3 helicopters, whereas this AD does not because that model is not FAA type-certificated.

This AD clarifies that Model SA–365N helicopters with an affected dual bearing installed that has an unknown total number of hours time-in-service accumulated on the dual bearing are subject to certain requirements in this AD, whereas EASA AD 2023–0001 is unclear about those parts with an accumulated usage that cannot be determined.

EASA AD 2023–0001 does not clarify what is considered an anomaly regarding the chip detector and conical housing chip detector; whereas, for this AD, an anomaly may be indicated by the magnetic component of the TGB chip detector or the conical housing chip detector not being magnetized. EASA AD 2023–0001 also does not clarify what is considered good condition regarding the chip detector or conical housing chip detector; whereas, for this AD, good condition for the chip detector is indicated when there are no signs of wear on the locking systems (including wear on the bayonets and slotted tubes) and good condition for the conical housing chip detector is when the conical housing chip detector is magnetized.

Where EASA AD 2023–0001 describes a doubt concerning the physical characteristics of any collected particles, this AD requires performing a metallurgical analysis. If there is any doubt remaining after performing the metallurgical analysis, EASA AD 2023–0001 requires contacting Airbus, whereas this AD requires removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' Design Organizational Approval (DOA) if the type, size, or classification of any collected particle cannot be determined after performing a metallurgical analysis.

If any particles (including abrasion-type particles) are found on the magnetic plug during any inspection that are outside the limits, EASA AD 2023–0001 requires replacing each affected dual bearing with a serviceable dual bearing, and replacing the TGB, whereas this AD requires removing each affected dual bearing and replacing with a serviceable dual bearing, or removing the TGB from service and replacing it with an airworthy TGB, or repairing the TGB in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' DOA.

Service information referenced in EASA AD 2023–0001 permits a pilot to perform a magnetic plug check, whereas this AD does not.

Service information referenced in EASA AD 2023–0001 specifies sending compliance forms, certain parts, and particles to the manufacturer, whereas this AD requires reporting certain information but does not require sending any parts or particles to the manufacturer.

Costs of Compliance

The FAA estimates that this AD affects 1 helicopter of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the magnetic plug of the TGB for particles takes about 1 work-hour for an estimated cost of $85 per inspection and up to $85 for the U.S. fleet, per inspection cycle.

Inspecting a dual bearing takes about 16 work-hours for an estimated cost of $1,360 per inspection and up to $1,360 for the U.S. fleet. If required, replacing a dual bearing takes about 1 additional work-hour following the inspection and parts cost about $6,678 for an estimated cost of $6,763 per dual bearing replacement.

If required, analyzing collected particles takes about 1 work-hour for an estimated cost of $85 per helicopter. If required, a metallurgical analysis takes about 1 work-hour for an estimated cost of $85 per instance.

If required, replacing an O-ring takes about 1 work-hour and parts cost about $100 for an estimated cost of $185 per O-ring.

If required, replacing a TGB takes about 8 work-hours and parts cost about $155,302 for an estimated cost of $155,982 per replacement.

The FAA has received no definitive data for the repair cost of a TGB.

If required, reporting information to the manufacturer takes about 1 work-hour for an estimated cost of $85 per instance.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–14 Airbus Helicopters: Amendment 39–22598; Docket No. FAA–2023–1720; Project Identifier MCAI–2023–00003–R.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model SA–365C1, SA–365C2, and SA–365N helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail rotor gearbox.

(e) Unsafe Condition

This AD was prompted by reports of damaged control rod dual bearings (dual bearings) installed on the tail rotor gearbox (TGB). The FAA is issuing this AD to inspect for particles in the TGB magnetic plug. The unsafe condition, if not addressed, could result in loss of yaw control and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0001, dated January 4, 2023 (EASA AD 2023–0001).

(h) Exceptions to EASA AD 2023–0001

(1) Where EASA AD 2023–0001 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0001 refers to the effective dates specified in paragraphs (h)(2)(i) and (ii) of this AD, this AD requires using the effective date of this AD.

(i) March 21, 2022 (the effective date of EASA AD 2022–0038, dated March 7, 2022).

(ii) The effective date of EASA AD 2023–0001.

(3) Where EASA AD 2023–0001 defines Groups, for Group 2, replace the text ''SA 365 N helicopters with an affected part installed that has accumulated 500 flight hours (FH) or more since first installation on a helicopter,'' with ''SA–365N helicopters with an affected part installed that has accumulated 500 or more total hours time-in-service on the affected part or the total hours time-in-service on the affected part cannot be determined.''

(4) Where the service information referenced in EASA AD 2023–0001 permits a pilot to perform a check of the magnetic plug, this AD requires that action be performed by a person authorized under 14 CFR 43.3.

(5) Where Note 1 of EASA AD 2023–0001 specifies, ''Helicopters that were under close monitoring on March 21 2022 (the effective date of EASA AD 2022–0038) must continue the close monitoring procedure up to the first inspection accomplished in accordance with the instructions of ASB 1;'' for this AD, replace that text with, ''Helicopters that are under close monitoring as of the effective date of this AD must continue close monitoring until the first instance of the requirements in paragraph (1) of EASA AD 2023–0001 are completed.''

(6) Where EASA AD 2023–0001 requires replacing the TGB and the service information referenced in EASA AD 2023–0001 specifies replacing the TGB, for this AD, before further flight, remove the TGB from service and replace it with an airworthy part, or repair the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(7) Where paragraphs (5) and (6) of EASA AD 2023–0001 require replacing an affected part, as defined in EASA AD 2023–0001,

with a serviceable part, as defined in EASA AD 2023–0001; for this AD, remove the affected part, as defined in EASA AD 2023–0001, from service and replace it with a serviceable part, as defined in EASA AD 2023–0001.

(8) Where paragraph (5) of EASA AD 2023–0001 does not specify a compliance time; for this AD, the compliance time for those actions is before further flight.

(9) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies to do the actions identified in paragraphs (h)(9)(i) and (ii) of this AD, this AD does not include those requirements.

(i) Comply with paragraph 2.D., except this AD requires reporting information, including the information in Appendix 4. of the service information, in accordance with paragraph (h)(18) of this AD.

(ii) Send parts and particles to Airbus Helicopters.

(10) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies replacing the chip detector or conical housing chip detector if there is an anomaly; for this AD, an anomaly may be indicated by the magnetic component of the TGB chip detector or the conical housing chip detector not being magnetized. If there is an anomaly, this AD requires before further flight, removing from service the TGB chip detector or the conical housing chip detector, as applicable to your model helicopter.

(11) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies making sure that the chip detector or conical housing chip detector is in good condition; for this AD, good condition for the chip detector is indicated when there are no signs of wear on the locking systems (including wear on the bayonets and slotted tubes). If there are any signs of wear on the locking systems, this AD requires, before further flight, removing the TGB chip detector from service. Good condition for the conical housing chip detector is when the conical housing chip detector is magnetized. If the conical housing chip detector is not magnetized, this AD requires, before further flight, removing the conical housing chip detector from service.

(12) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies replacing the O-rings if necessary; this AD requires, before further flight, removing any affected O-ring from service and replacing it with an airworthy O-ring.

(13) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies removing an affected TGB, returning it to an approved workshop, including sending all the particles found in the affected part; this AD requires, before further flight, removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' DOA. If approved by the DOA, the approval must include the DOA-authorized signature. You are not required to send the particles found in the TGB to Airbus Helicopters or send an affected TGB to an approved workshop.

(14) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies to use tooling, this AD allows the use of equivalent tooling.

(15) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies discarding certain parts, this AD requires removing those parts from service.

(16) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies performing a metallurgical analysis of particles if there is a doubt concerning the type, size, or classification of any collected particle, this AD requires, before further flight, performing a metallurgical analysis if the type, size, or classification of any collected particle cannot be determined.

(17) Where the service information (including any work card) referenced in EASA AD 2023–0001 specifies if there is any doubt remaining (pertaining to particle classification) after performing a metallurgical analysis, contact Airbus, this AD requires, if the type, size, or classification of any collected particle cannot be determined after performing a metallurgical analysis, before further flight, removing an affected TGB from service and replacing it with an airworthy part, or repairing the TGB in accordance with a method approved by the Manager, Europe Middle East & Africa Section, International Validation Branch, FAA; EASA; or Airbus Helicopters' DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(18) Where the service information referenced in EASA AD 2023–0001 requires reporting inspection results, including Appendix 4.A., to Airbus Helicopters, if any M50 particles are found, this AD requires reporting those inspection results along with a detailed description of any information and findings, and if possible, provide photos, at the applicable time in paragraph (h)(18)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after accomplishing the metallurgical analysis.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(19) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0001.

(i) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Kevin Kung, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (781) 238–7244; email *9-AVS-AIR-BACO-COS@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0001, dated January 4, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0001, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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-locations* or email *fr.inspection@nara.gov.*

Issued on October 30, 2023.

Victor Wicklund,

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

[FR Doc. 2023–25556 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1635; Project Identifier MCAI–2022–01579–T; Amendment 39–22583; AD 2023–21–11]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary and a determination by the design approval holder (DAH) that some structural elements are subject to widespread fatigue damage (WFD). This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, and for certain airplanes requires a structural modification of the wing lower skin panels, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1635; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1635.

FOR FURTHER INFORMATION CONTACT: Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5366; email *joshua.k.bragg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. The NPRM published in the **Federal Register** on August 17, 2023 (88 FR 55956). The NPRM was prompted by AD 2022–12–01, effective December 14, 2022, issued by ANAC (ANAC AD 2022–12–01), which is the aviation authority for Brazil (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed to address structural fatigue. Additionally, an evaluation by the DAH indicated that some structural elements, particularly the wing lower skin stringers, are subject to WFD. A modification is needed before the wing lower skin panel reaches its structural modification point (SMP), and inspections are needed to preclude WFD. ANAC AD 2022–12–01 specifies that it requires a modification of the wing lower skin panels that terminates the repetitive inspections required by ANAC AD 2019–06–01 (which corresponds to FAA AD 2020–04–16, Amendment 39–19853 (85 FR 18435, dated April 2, 2020)) (AD 2020–04–16). Accomplishment of the modification specified in this AD terminates the repetitive inspections required by paragraph (g) of AD 2020–04–16, for the airplanes identified in paragraph (a)(2) of ANAC AD 2022–12–01 only.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, and for certain airplanes to require a structural modification of the wing lower skin panels, as specified in ANAC AD 2022–12–01. The FAA is issuing this AD to address cracking in principle structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1635.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–12–01 describes new or more restrictive airworthiness limitations for airplane structures. For certain airplanes, ANAC AD 2022–12–01 specifies procedures for the incorporation of a certain structural modification (*i.e.,* reinforcement of left-hand (LH) and right-hand (RH) wing lower skin panels). 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.

Costs of Compliance

The FAA estimates that this AD affects 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this 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 revision to the existing maintenance or inspection program to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 569 work-hours × $85 per hour = $48,365	Up to $280,825	$329,190	Up to $10,863,270.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–21–11 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22583; Docket No. FAA–2023–1635; Project Identifier MCAI–2022–01579–T.

(a) Effective Date

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

(b) Affected ADs

This AD affects AD 2020–04–16, Amendment 39–19853 (85 FR 18435, April 2, 2020) (AD 2020–04–16).

(c) Applicability

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 57, Wings.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary and a determination by the design approval holder (DAH) that some structural elements are subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address cracking in principle structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2022–12–01, effective December 14, 2022 (ANAC AD 2022–12–01).

(h) Exceptions to ANAC AD 2022–12–01

(1) Where ANAC AD 2022–12–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) The initial compliance time for doing the tasks specified in paragraph (b)(3) of ANAC AD 2022–12–01 is at the applicable ''threshold or interval'' as incorporated by the requirements of paragraph (b)(3) of ANAC AD 2022–12–01, or within 30 days after the effective date of this AD, whichever occurs later. Where the service information referenced in ANAC AD 2022–12–01 does not specify a threshold, this AD requires using the applicable flight cycles (FC), flight hours (FH), or months (MO) identified as the interval as the threshold. The applicable FC, FH, and MO in the ''T: Threshold I: Interval'' column of the service information referenced in ANAC AD 2022–12–01 are as specified in paragraph (h)(2)(i) or (ii) of this AD:

(i) For any task with an applicability that includes ''POST–MOD SB,'' use the specified number of FC, FH, or MO since accomplishment of the applicable service bulletin.

(ii) For any task with an applicability that does not include ''POST–MOD SB,'' use total FC, total FH, or MO since issuance of the original airworthiness certificate or original export certificate of airworthiness, as applicable.

(3) Table 01 and paragraph (c)(2) of ANAC AD 2022–12–01 specify a grace period. However, for this AD the grace period is as identified in Table 01 of ANAC AD 2022–12–01, except replace the text ''within the next 3,000 FC'' with ''within 3,000 FC after the effective date of this AD;'' and replace the text ''within the next 4,000 FH'' with ''within 4,000 FH after the effective date of this AD.''

(4) Where ANAC AD 2022–12–01 Table 01 specifies a compliance time based on the accomplishment of certain service information, replace the text ''the accomplishment of the Embraer SB No. 190–57–005, Revision 01, dated October 27, 2006,'' with ''the accomplishment of Embraer SB 190–57–0005.''

(5) This AD does not adopt the provisions specified in paragraph (e)(1) of ANAC AD 2022–12–01.

(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of paragraph (f) of ANAC AD 2022–12–01.

(j) Terminating Action for AD 2020–04–16

Accomplishing the actions required by this AD terminates the repetitive inspection requirements of paragraph (g) of AD 2020–04–16, for the airplanes identified in paragraph (a)(2) of ANAC AD 2022–12–01 only.

(k) 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 (l) 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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2) of this AD, if any service information referenced in ANAC AD 2022–12–01 contains steps in the Accomplishment Instructions or figures that are labeled as RC, the instructions in RC steps, including subparagraphs under an RC step and any figures identified in an RC step, must be done to comply with this AD; any steps including substeps under those steps, that are not identified as RC are recommended. The instructions in steps, including substeps under those steps, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep.

(l) Additional Information

For more information about this AD, contact Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 216–316–6418; email *joshua.k.bragg@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2022–12–01, effective December 14, 2022.

(ii) [Reserved]

(3) For ANAC AD 2022–12–01, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website: *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

(5) You may view this 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 20, 2023.

Ross Landes,

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

[FR Doc. 2023–25495 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1414; Project Identifier MCAI–2023–00438–T; Amendment 39–22593; AD 2023–22–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report that the axis index washers on the forward and rear main landing gear door hinges were found inverted in production. This AD requires a one-time detailed inspection of the axis index washers for correct installation, and, depending on findings, replacement of the axis index washers, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1414; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1414.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email: *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on

July 14, 2023 (88 FR 45112). The NPRM was prompted by AD 2023–0051, dated March 10, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0051) (also referred to as the MCAI). The MCAI states that the forward (#1) and rear (#3) main landing gear door (MLGD) hinge axis index washers were found inverted in production (index washer for forward fitting installed at rear fitting and vice versa). This condition, if not detected and corrected, could lead to reduced structural integrity of the MLGD hinge fittings, possibly resulting in the loss of an MLGD during flight, and consequent injury to persons on the ground.

The FAA is issuing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1414.

Discussion of Final Airworthiness Directive

Comments

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

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

Request for Clarification of Required Actions

Delta requested that an exception should be added to paragraph (h) of the proposed AD stating that the accomplishment of A350 maintenance procedures A350–A–32–12–72–00ZZZ–520Z–A and A350–A–32–12–72–00ZZZ–720Z–A to be utilized with the terminology ''Refer to'' in lieu of ''in accordance with'' to allow utilizing only the portions of the maintenance procedure that pertains to the replacement of the index washers, index pins and axis assemblies, one at a time, first the FWD side and then the AFT side in lieu of removing and re-installing the entire MLGD when replacing the affected parts per the proposed AD. Delta stated that, alternatively, the exception could identify specific steps and paragraphs of the maintenance procedures that are utilized for replacement of the affected parts only. Delta contends that the removal of the entire MLGD appears not to be the intent of Airbus Service Bulletin A350–52–P048 (the service information referenced in EASA AD 2023–0051), the EASA AD, and this proposed AD. Delta noted that the ''in accordance with'' language in the service information is contradictory to the detailed subsequent steps of the service information.

The FAA agrees the intent was not to remove and re-install the MLGD, but to replace the affected parts. The FAA AD agrees that A350 maintenance procedures A350–A–32–12–72–00ZZZ–520Z–A and A350–A–32–12–72–00ZZZ–720Z–A are for reference when accomplishing the required actions. The FAA added paragraph (h)(2) to this AD to clarify the required actions.

Request for Clarification of Figure Reference

Delta requested an exception should be added to paragraph (h) of the proposed AD stating where maintenance procedure A350–A–52–XX–P048–01ZZZ–93CZ–A, paragraphs C(1)(c)3 & 4, Figure BC refers to Detail E, change to Detail F; and where paragraphs C(2)(c)3 & 4, Figure BD, refers to Detail E, change to Detail F. Delta noted these errors are in the original issue and Revision 01 of Airbus Service Bulletin A350–52–P048.

The FAA has confirmed with the manufacturer that the service information steps are correct and address the unsafe condition and that Figures BC and BD are for reference only. The manufacturer stated that it is considering addressing any errors in a future revision of Airbus Service Bulletin A350–52–P048. The FAA has not changed this AD in this regard.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0051 specifies procedures for a one-time detailed inspection of the MLGD forward and rear hinges for incorrectly installed axis index washers and, depending on findings, replacement of the axis index washers.

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

Costs of Compliance

The FAA estimates that this AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2.25 work-hours × $85 per hour = $192	$0	$192	$4,416

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8.25 work-hours × $85 per hour = $702	$10 per door	$712

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–09 Airbus SAS: Amendment 39–22593; Docket No. FAA–2023–1414; Project Identifier MCAI–2023–00438–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0051, dated March 10, 2023 (EASA AD 2023–0051).

(d) Subject

Air Transport Association (ATA) of America Code: 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report that the axis index washers on the forward and rear main landing gear door (MLGD) hinges were found inverted in production. The FAA is issuing this AD to address incorrectly installed washers. The unsafe condition, if not addressed, could result in reduced structural integrity of the MLGD hinge fittings, possibly resulting in a loss of an MLGD during flight, and consequent injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0051.

(h) Exceptions to EASA AD 2023–0051

(1) Where the applicability and Groups definitions of EASA AD 2023–0051 refer to serial numbers, replace the text ''the SB'' with ''Airbus Service Bulletin A350–52–P048, dated November 24, 2022.''

(2) Where the service information referenced in EASA AD 2023–0051 specifies to accomplish actions ''in accordance with'' A350 maintenance procedures A350–A–32–12–72–00ZZZ–520Z–A and A350–A–32–12–72–00ZZZ–720Z–A, for this AD, those maintenance procedures are for reference only when accomplishing the actions.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0051.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0051 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0051, dated March 10, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0051, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website: *ad.easa.europa.eu.*

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

(5) You may view this 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 30, 2023.

Victor Wicklund,

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

[FR Doc. 2023–25506 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1504; Project Identifier MCAI–2023–00473–A; Amendment 39–22595; AD 2023–22–11]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. (Embraer) Model EMB–505 airplanes. This AD was prompted by an occurrence of corrosion on the clutch retaining bolt of the aileron autopilot servo mount. This AD requires repetitively replacing the clutch retaining bolt and washer of the aileron autopilot servo mount, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No.FAA–2023–1504; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For service information identified in this final rule, contact ANAC, Continuing Airworthiness Technical Branch (GTAC), Rua Doutor Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; phone: 55 (12) 3203–6600; email: *pac@anac.gov.br;* website: *anac.gov.br/en/*. You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1504.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Embraer Model EMB–505 airplanes. The NPRM published in the **Federal Register** on July 21, 2023 (88 FR 47092). The NPRM was prompted by AD 2023–02–01R1, effective March 14, 2023 (ANAC AD 2023–02–01R1) (also referred to as the MCAI), issued by ANAC, which is the aviation authority for Brazil. The MCAI states that an occurrence of corrosion was found on the clutch retaining bolt of the aileron autopilot servo mount. This condition could result in failure of the clutch retaining bolt of the aileron autopilot servo mount, which could disengage the clutch from the drive pin and jam the aileron controls, resulting in reduced controllability of the airplane.

In the NPRM, the FAA proposed to require repetitively replacing the clutch retaining bolt and washer of the aileron autopilot servo mount, as specified in ANAC AD 2023–02–01R1. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1504.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Embraer and NetJets. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Exceptions in Paragraph (h)(3)

Embraer requested that paragraph (h)(3) of the proposed AD, ''Exceptions to ANAC AD 2023–02–01R1'', be revised to state ''. . . this AD requires compliance with the most restrictive criteria for each applicability range (in months and flight hours) in Table 01 of ANAC AD 2023–02–01R1.'' The commenter explained that this change would clarify the language within this exception so that operators would know that not all affected aircraft would have to perform the task within the most restrictive criteria of within 3 months or 50 flight hours.

The FAA agrees with the commenter's request and revised paragraph (h)(3) of this AD accordingly.

Request To Add a Credit for Previous Actions Paragraph

NetJets requested that a credit for previous actions paragraph be added to the proposed AD, similar to paragraph (c) of ANAC AD 2023–02–01R1. The commenter explained that this change would allow operators to sign off the compliance to the FAA AD using Embraer Service Bulletin SB505–22–0004, Revision 01, dated September 23, 2022 (Embraer SB505–22–0004, Revision 01); Revision 02, dated September 30, 2022 (Embraer SB505–22–0004, Revision 02); or Revision 03, dated October 10, 2022 (Embraer SB505–22–0004, Revision 03).

The FAA disagrees with the commenter's request. This AD already implicitly provides credit for certain actions completed prior to the effective date of this AD. Paragraph (g) of this AD requires operators to comply with all required actions and compliance times specified in ANAC AD 2023–02–01R1, except as specified in paragraphs (h) and (i) of this AD. Paragraph (h) of this AD is ''Exceptions to ANAC AD 2023–02–01R1'' and paragraph (i) of this AD is ''No Reporting Requirement.'' Paragraph (h) of this AD does not include an exception to paragraph (c) of ANAC AD 2023–02–01R1, which is identified as ''Credit for previous actions.'' Paragraph (c) of ANAC AD 2023–02–01R1 provides credit for replacement of the aileron autopilot servo mount clutch retaining bolt and washer using Embraer Service Bulletin SB505–22–0004, dated September 22, 2023; Embraer SB505–22–0004, Revision 01; Embraer SB505–22–0004, Revision 02; or Embraer SB505–22–0004, Revision 03. Because this AD does not include an exception to paragraph

(c) of ANAC AD 2023–02–01R1, it allows operators to take credit for actions done prior to the effective date of this AD using revisions of Embraer SB505–22–0004 that are earlier than Revision 04, dated January 6, 2023, as provided by paragraph (c) of ANAC AD 2023–02–01R1; therefore, there is no need to revise this AD per the commenter's request.

The FAA has not changed this AD regarding this issue.

Conclusion

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

Related Service Information Under 1 CFR Part 51

ANAC AD 2023–02–01R1 specifies procedures for replacing the clutch retaining bolt and washer of the aileron autopilot servo mount.

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.**

Costs of Compliance

The FAA estimates that this AD affects 505 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace bolt and washer	1 work-hour × $85 per hour = $85.	$50	$135 per replacement interval	$68,175 per replacement interval.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, all of the costs associated with the initial bolt and washer replacement may be covered under warranty.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–11 Embraer S.A.: Amendment 39–22595; Docket No. FAA–2023–1504; Project Identifier MCAI–2023–00473–A.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–505 airplanes, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2023–02–01R1, effective March 14, 2023 (ANAC AD 2023–02–01R1), certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2215, Autopilot Main Servo.

(e) Unsafe Condition

This AD was prompted by an occurrence of corrosion on the clutch retaining bolt of the aileron autopilot servo mount. The FAA is issuing this AD to address the corrosion in the clutch retaining bolt of the aileron autopilot servo mount. The unsafe condition, if not addressed, could result in failure of the clutch retaining bolt of the aileron autopilot servo mount, which could disengage the clutch from the drive pin and jam the aileron controls, resulting in reduced controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023–02–01R1.

(h) Exceptions to ANAC AD 2023–02–01R1

(1) Where ANAC AD 2023–02–01R1 refers to February 6, 2023, the effective date of ANAC AD 2023–02–01, this AD requires using the effective date of this AD.

(2) Where ANAC AD 2023–02–01R1 requires replacing a part with a new part, for the purposes of this AD, ''new'' means zero flight hours.

(3) Where the ''NOTE'' to Table 01 in ANAC AD 2023–02–01R1 specifies ''If the airplane operation age and/or the flight hours criteria change before the SB accomplishment, the most restrictive criteria must be obeyed,'' this AD requires complying with the most restrictive criteria for each applicability range (in months and flight hours) in Table 01 of ANAC AD 2023–02–01R1.

(4) This AD does not adopt paragraph (d) of ANAC AD 2023–02–01R1.

(i) No Reporting Requirement

Although the service information referenced in ANAC AD 2023–02–01R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023–02–01R1, effective March 14, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023–02–01R1, contact ANAC, Continuing Airworthiness Technical Branch (GTAC), Rua Doutor Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; phone: 55 (12) 3203–6600; email: *pac@anac.gov.br;* website: *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

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

(5) You may view this 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 30, 2023.

Victor Wicklund,

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

[FR Doc. 2023–25525 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1705; Project Identifier MCAI–2023–00480–T; Amendment 39–22594; AD 2023–22–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–02–13, which applied to certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2020–02–13 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require certain actions in AD 2020–02–13 and requires 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 incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 12, 2020 (85 FR 6744, February 6, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1705; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- For Dassault service information incorporated by reference in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website *dassaultfalcon.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1705.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–02–13, Amendment 39–19827 (85 FR 6744, February 6, 2020) (AD 2020–02–13). AD 2020–02–13 applied to certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G. AD 2020–02–13 required revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. The FAA issued AD 2020–02–13 to address, among other things, fatigue cracking and damage in principal structural elements; such

fatigue cracking and damage could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on August 11, 2023 (88 FR 54500). The NPRM was prompted by AD 2023–0059, dated March 16, 2023 (EASA AD 2023–0059) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require certain actions in AD 2020–02–13 and to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2023–0059. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1705.

Discussion of Final Airworthiness Directive

Comments

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

Additional Changes Made to This AD

The FAA has added paragraph (l) of this AD to clarify that this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05), for Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes on which the supplemental structural inspection program (SSIP) has been incorporated into the airplane's maintenance program only. The FAA has also redesignated subsequent paragraphs accordingly. The FAA also added paragraph (b)(2) of this AD to specify that AD 2010–26–05 is affected by this AD. AD 2020–02–13 included this terminating action, but the FAA inadvertently omitted it from the proposed AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0059. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of March 12, 2020 (85 FR 6744, February 6, 2020).

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

Costs of Compliance

The FAA estimates that this AD affects 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–02–13 to be $7,650 (90 work-hours × $85 per work-hour).

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 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–02–13, Amendment 39–19827 (85 FR 6744, February 6, 2020); and

■ b. Adding the following new AD:

2023–22–10 Dassault Aviation: Amendment 39–22594; Docket No. FAA–2023–1705; Project Identifier MCAI–2023–00480–T.

(a) Effective Date

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

(b) Affected ADs

(1) This AD replaces AD 2020–02–13, Amendment 39–19827 (85 FR 6744, February 6, 2020) (AD 2020–02–13).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0059, dated March 16, 2023 (EASA AD 2023–0059).

(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, among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity 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 No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–02–13, with no changes. Within 90 days after March 12, 2020 (the effective date of AD 2020–02–13), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual, or within 90 days after March 12, 2020 (the effective date of AD 2020–02–13), whichever occurs later. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual specifies a compliance time in years, those compliance times start from the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness.

(h) Retained Restrictions on Alternative Actions and Intervals With No Change

This paragraph restates the requirements of paragraph (j) of AD 2020–02–13, with no changes. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (m)(1) of this AD.

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

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0059. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2023–0059

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0059.

(2) Paragraph (3) of EASA AD 2023–0059 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0059 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0059, 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 2023–0059.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0059.

(k) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0059.

(l) Terminating Actions for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes on which the supplemental structural inspection program (SSIP) has been incorporated into the airplane's maintenance program only.

(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 International Validation Branch, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation'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 Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email: *tom.rodriguez@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 December 26, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0059, dated March 16, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 12, 2020 (85 FR 6744, February 6, 2020).

(i) Chapter 5–40–01, Airworthiness Limitations, Revision 10, effective January 1, 2019, of the Dassault Aviation Falcon 20 Maintenance Manual.

(ii) [Reserved]

(5) For EASA AD 2023–0059, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

(6) For Dassault service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; website *dassaultfalcon.com*.

(7) 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.

(8) 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 November 13, 2023.

Ross Landes,

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

[FR Doc. 2023–25497 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1651; Project Identifier MCAI–2023–00481–T; Amendment 39–22589; AD 2023–22–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–23–10, which applied to certain Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2020–23–10 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2020–23–10 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 23, 2020 (85 FR 73404, November 18, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1651; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1651.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–23–10, Amendment 39–21326 (85 FR 73404, November 18, 2020) (AD 2020–23–10). AD 2020–23–10 applied to certain Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2020–23–10 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–23–10 to address, among other things, fatigue cracking and damage in principle structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on August 14, 2023 (88 FR 54935). The NPRM was prompted by AD 2023–0060, dated March 16, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0060) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–23–10 and to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2023–0060. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1651.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0060 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2019–0141, dated June 17, 2019, which the Director of the Federal Register approved for incorporation by reference as of December 23, 2020 (85 FR 73404, November 18, 2020).

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

Costs of Compliance

The FAA estimates that this AD affects 168 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–23–10 to be $7,650 (90 work-hours × $85 per work-hour).

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 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–23–10, Amendment 39–21326 (85 FR 73404, November 18, 2020); and

■ b. Adding the following new AD:

2023–22–05 Dassault Aviation: Amendment 39–22589; Docket No. FAA–2023–1651; Project Identifier MCAI–2023–00481–T.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2020–23–10, Amendment 39–21326 (85 FR 73404, November 18, 2020) (AD 2020–23–10).

(c) Applicability

This AD applies to Dassault Aviation airplanes specified in paragraphs (c)(1) and (2) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0060, dated March 16, 2023 (EASA AD 2023–0060).

(1) Model FAN JET FALCON airplanes.

(2) Model FAN JET FALCON SERIES C, D, E, F, and G airplanes.

(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, among other things, fatigue cracking and damage in principle structural elements; such fatigue cracking and damage could result in reduced structural integrity 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 a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2020–23–10, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0141, dated June 17, 2019 (EASA AD 2019–0141). 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 2019–0141, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–23–10, with no changes.

(1) The requirements specified in paragraphs (1), (2), (4), and (5) of EASA AD 2019–0141 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2019–0141 specifies revising ''the approved AMP'' 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 2019–0141 within 90 days after December 23, 2020 (the effective date of AD 2020–23–10).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0141 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0141, or within 90 days after December 23, 2020 (the effective date of AD 2020–23–10), whichever occurs later.

(4) The ''Remarks'' section of EASA AD 2019–0141 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–23–10, with a new exception. 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) or intervals are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0141.

(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 2023–0060. 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 2023–0060

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0060.

(2) Paragraph (3) of EASA AD 2023–0060 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0060 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0060, 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 2023–0060.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0060.

(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) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0060.

(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 International Validation Branch, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation'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 Tom Rodriguez, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3226; email: *tom.rodriguez@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 December 26, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0060, dated March 16, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on December 23, 2020 (85 FR 73404, November 18, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2019–0141, dated June 17, 2019.

(ii) [Reserved]

(5) For EASA ADs 2023–0060 and 2019–0141, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) 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.

(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 27, 2023.

Caitlin Locke, Director,

Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25496 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1638; Project Identifier AD–2022–00466–E; Amendment 39–22586; AD 2023–22–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–02–10, which applied to certain Pratt & Whitney Division (PW) Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines. AD 2018–02–10 required performing repetitive fluorescent penetrant inspections (FPIs) to detect cracks in the outer diffuser case (ODC), removal of any ODC that fails inspection, and updating the mandatory inspections in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA). Since the FAA issued AD 2018–02–10, PW developed a modification to reduce the susceptibility of ODC cracking. This AD retains the ALS update requirement from AD 2018–02–10, requires replacing certain ODC part numbers with parts eligible for installation, expands the applicability to all ODC part numbers, and adjusts the compliance threshold of the FPIs of the ODC. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1638; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1638.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–02–10, Amendment 39–19163 (FR 83 2896, January 22, 2018), (''AD 2018–02–10''). AD 2018–02–10 applied to PW Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines with ODC part number (P/N) 50J775 or P/N 50J930, installed. The NPRM published in the **Federal Register** on August 8, 2023 (88 FR 53406). The NPRM was prompted by an updated analysis by the engine manufacturer, which determined that cracks on the ODC originated due to high stress in the area between Tt3 boss and thermocouple bracket boss. PW developed a modification to improve the surface area between Tt3 boss and

thermocouple bracket boss to reduce the ODC's susceptibility to cracking.

Consequently, the FAA determined that it is necessary to expand the applicability to all ODC P/Ns, adjust the initial FPI threshold for the ODC to improve the inspection program, and to require certain ODCs to be replaced with an ODC that has been modified to lower the stresses in the area between Tt3 boss and thermocouple bracket boss.

In the NPRM, the FAA proposed to continue to require retain certain requirements of AD 2018–02–10. In the NPRM, the FAA also proposed to require revising the ALS of the existing airplane maintenance manual or ICA and your existing approved maintenance program, as applicable, to include piece-part inspections of the ODC; expanding the applicability to include all engines; initial and repetitive FPIs, and depending on the results of the FPI, require removal or re-inspection of the ODC. Lastly the NPRM proposed to require replacement of certain ODCs with a part eligible for installation at next piece-part exposure.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. Commenters included United Airlines, The Boeing Company, and Air Lines Pilots Association, International. All commenters supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes which include updating the manufacturer contact information, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Alert Service Bulletin (ASB) PW4G–112–A72–347, Revision 4, dated September 1, 2022. This ASB provides guidance on performing FPIs on certain bosses of the ODC. 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.**

Other Related Service Information

The FAA reviewed PW Service Bulletin (SB) PW4G–112–72–357, dated February 25, 2019. This SB provides procedures to modify and re-identify ODC assemblies to lower the stresses in the area between the Tt3 boss and the thermocouple bracket boss.

Costs of Compliance

The FAA estimates that this AD, affects 108 engines installed on airplanes of U.S. registry. The FAA has no way to determine the number of operators that will replace the ODC with a modified ODC or a zero-time ODC. As a result, the total cost on U.S. operators for these actions is not estimated.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform high sensitivity FPI of the ODC T3 thermocouple probe boss.	10 work-hours × $85 per hour = $850	$0	$850	$91,800
Revise the ALS	1 work-hour × $85 per hour = $85	0	85	9,180
Replace the ODC with modified ODC	3 work-hours × $85 per hour = $255	12,000	12,255	.....
Replace the ODC with zero-time ODC	3 work-hours × $85 per hour = $255	2,300,000	2,300,255	.....

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2018–02–10, Amendment 39–19163 (83 FR 2896, January 22, 2018); and

■ b. Adding the following new airworthiness directive:

2023–22–02 Pratt & Whitney Division: Amendment 39–22586; Docket No. FAA–2023–1638; Project Identifier AD–2022–00466–E.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2018–02–10, Amendment 39–19163 (83 FR 2896, January 22, 2018).

(c) Applicability

This AD applies to Pratt & Whitney Division (PW) Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by the discovery of multiple cracked outer diffuser cases (ODCs). We are issuing this AD to prevent failure of the ODC. This condition, if not addressed, could result in failure of the ODC, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance times specified in paragraphs (g)(1)(i) though (iii) of this AD, perform an initial high sensitivity fluorescent penetrant inspection (FPI) of the ODC T3 thermocouple probe boss (Tt3 boss) for crack indications in accordance with the Accomplishment Instructions, paragraph 1.F. of Part A or paragraph 1.B. of Part B, as applicable, of PW Alert Service Bulletin PW4G–112–A72–347, Revision 4, dated September 1, 2022 (ASB PW4G–112–A72–347, Rev 4).

(i) For an ODC that has accumulated less than 12,000 cycles since new (CSN) with no prior high sensitivity FPI of the ODC Tt3 boss, perform the high sensitivity FPI before accumulating 9,200 CSN or within 1,000 flight cycles (FCs), after the effective date of this AD, whichever occurs later.

(ii) For an ODC with unknown CSN or an ODC that has accumulated 12,000 CSN or more with no prior high sensitivity FPI of the ODC Tt3 boss, perform the high sensitivity FPI before accumulating 13,000 CSN or within 1,000 FCs, after February 26, 2018 (the effective date of AD 2018–02–10), whichever occurs later.

(iii) For an ODC that has undergone a high sensitivity FPI of the ODC Tt3 boss prior to the effective date of this AD that resulted in no crack indication, perform the high sensitivity FPI before accumulating 2,000 FCs since performance of the last FPI or during the next engine shop visit, whichever occurs first.

(iv) For an ODC that has undergone a high sensitivity FPI of the ODC Tt3 boss prior to the effective date of this AD that resulted in an indication of a crack, perform the actions required by paragraphs (g)(3)(i) through (iii) of this AD, as applicable.

(2) Thereafter, repeat the high sensitivity FPI of the ODC Tt3 boss at each engine shop visit or before exceeding 2,000 FCs from the last high sensitivity FPI of the ODC Tt3 boss, whichever occurs first, in accordance with the Accomplishment Instructions, paragraphs 1.F. of Part A or paragraph 1.B. of Part B, as applicable, of ASB PW4G–112–A72–347, Rev 4.

(3) If, during any inspection required by paragraphs (g)(1) or (2) of this AD, there is any crack indication, perform the actions specified in paragraphs (g)(3)(i) through (iii) of this AD.

(i) For engines installed on an aircraft, repeat the high sensitivity FPI or remove the ODC from service in accordance with the actions and compliance times specified in the Accomplishment Instructions, Part A, paragraphs 1.G. and 1.H., of ASB PW4G–112–A72–347, Rev 4.

(ii) For engines not installed on an aircraft, repeat the high sensitivity FPI or remove the ODC from service in accordance with the actions and compliance times specified in the Accomplishment Instructions, Part B, paragraphs 1.C. and 1.D., of PW ASB PW4G–112–A72–347, Rev 4.

(iii) For engines at an engine shop visit, before further flight, remove the ODC from service.

(4) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the existing engine maintenance manual or Instructions for Continued Airworthiness and the existing approved maintenance program, as applicable, to include the piece-part inspections of the ODC as defined in Table 1 to paragraph (g)(4) of this AD.

TABLE 1 TO PARAGRAPH (g)(4)—ADDITION TO ALS

Description	Part No.	Cleaning, inspection and repair (CIR) manual section	CIR manual inspection	CIR manual
Case, Diffuser, Outer	All	72–41–13	Inspection/Check (I/C–02)	P/N 51A750

(5) For engines with ODC part number (P/N) 50J775 or 50J930 installed, at the next piece-part exposure after the effective date of this AD, replace the ODC with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is any time the ''M'' flange is separated.

(2) For the purpose of this AD, a ''piece-part exposure'' is when the ODC is removed from the engine and fully disassembled.

(3) For the purpose of this AD, a ''part eligible for installation'' is an ODC with P/N 50J775–001, 50J775–002, 50J930–001, or 50J930–002.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Alert Service Bulletin PW4G–112–A72–347, Revision 4, dated September 1, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7759.

(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-locations* or email *fr.inspection@nara.gov.*

Issued on October 25, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25524 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1637; Project Identifier MCAI–2023–00184–E; Amendment 39–22588; AD 2023–22–04]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 engines. This AD was prompted by reports of cracking and separation of certain low-pressure turbine (LPT) stage 1 blade assemblies. This AD requires initial and repetitive inspections of affected LPT stage 1 blade assemblies for cracking or separation and, depending on the results of the inspections, reduction of the inspection interval or replacement of the LPT stage 1 blade set and disk, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1637; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1637.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all RRD Model Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 engines. The NPRM published in the **Federal Register** on July 31, 2023 (88 FR 49361). The NPRM was prompted by EASA AD 2023–0027, dated January 31, 2023 (EASA AD 2023–0027) (also referred to as the MCAI) issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that manufacturer inspections detected cracking and separation of blade pairs in the weld region of certain LPT stage 1 blade assemblies. A blade assembly consists of a pair of blades welded together at the outer shroud. There are 85 LPT stage 1 blade assemblies in one set. Such cracking and separation could cause failure of affected parts and damage to the LPT module.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1637.

In the NPRM, the FAA proposed to require initial and repetitive inspections of affected LPT stage 1 blade assemblies for cracking or separation and, depending on the results of the inspections, reduction of the inspection interval or replacement of the LPT stage 1 blade set and disk. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from The Boeing Company (Boeing). Boeing supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0027, which specifies procedures for inspection of affected LPT stage 1 blade assemblies and replacement of the LPT stage 1 blade set and disk. EASA AD 2023–0027 also specifies a reduction of the repetitive inspection intervals if cracking or separation is detected and meets certain criteria.

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**.

Costs of Compliance

The FAA estimates that this AD affects 26 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection LPT stage 1 blade assemblies	4 work-hours × $85 per hour = $340	$0	$340	$8,840

The FAA estimates the following costs to do any necessary replacements that are required based on the results of the inspection. The agency has no way of determining the number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace LPT stage 1 blade set and disk	4 work-hours × $85 per hour = $340	$720,000	$720,340

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–04 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–22588; Docket No. FAA–2023–1637; Project Identifier MCAI–2023–00184–E.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of cracking and separation of certain low-pressure turbine (LPT) stage 1 blade assemblies. The FAA is issuing this AD to prevent failure of the LPT stage 1 blades. The unsafe condition, if not addressed, could result in high energy debris release, damage to the airplane, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2023–0027, dated January 31, 2023 (EASA AD 2023–0027).

(h) Exceptions to EASA AD 2023–0027

(1) Where EASA AD 2023–0027 specifies compliance from its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2023–0027.

(3) Where the service information referenced in EASA AD 2023–0027 specifies discarding the removed LP turbine stage 1 blade set, this AD requires removing the affected part from service.

(4) Where the service information referenced in EASA AD 2023–0027 specifies to quarantine the removed LP turbine stage 1 rotor disc, this AD requires removing the affected part from service.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0027 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0027, dated January 31, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0027, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website:*easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this 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 27, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25521 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1311; Project Identifier MCAI–2022–00624–E; Amendment 39–22587; AD 2023–22–03]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–08–02 for all Safran Helicopter Engines, S.A. (Safran) (type certificate previously held by Turbomeca, S.A.) Model Arriel 2D and Arriel 2E engines. AD 2021–08–02 required replacing certain critical parts before reaching their published in-service life limits, performing scheduled maintenance tasks before reaching their published periodicity, and performing unscheduled maintenance tasks when the engine meets certain conditions. Since the FAA issued AD 2021–08–02, Safran has revised the airworthiness limitation section (ALS) of the existing maintenance and overhaul manuals, introducing new and more restrictive instructions and maintenance tasks, which prompted this AD action. This AD requires updating the ALS of the existing engine maintenance manual (EMM) or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals, including life limits, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1311; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1311.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–08–02, Amendment 39–21496 (86 FR 26651, May 17, 2021), (AD 2021–08–02). AD 2021–08–02 applied to all Safran Model Arriel 2D and Arriel 2E engines. AD 2021–08–02 required replacing certain critical parts before reaching their published in-service life limits, performing scheduled maintenance tasks before reaching their published periodicity, and performing unscheduled maintenance tasks when the engine meets certain conditions. As a terminating action, AD 2021–08–02 required operators to revise the ALS of their existing approved aircraft maintenance program (AMP) by incorporating the revised airworthiness limitations and maintenance tasks. The FAA issued AD 2021–08–02 to prevent failure of the engine.

The NPRM published in the **Federal Register** on October 31, 2022 (87 FR 65535). The NPRM was prompted by EASA AD 2022–0083, dated May 11, 2022 (EASA AD 2022–0083), issued by EASA, which is the Technical Agent for the Member States of the European Union (referred to after this as the MCAI), which supersedes EASA AD 2018–0273, dated December 13, 2018 (EASA AD 2018–0273). The MCAI states that the manufacturer published a revised ALS introducing new and more restrictive maintenance tasks and airworthiness limitations. These new or more restrictive maintenance tasks and airworthiness limitations include initial and repetitive inspections for clogging of the power turbine air pressurization pipe.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1311.

In the NPRM, the FAA proposed to require revising the ALS of the operator's existing approved maintenance or inspection program, as applicable, to incorporate new and more restrictive airworthiness limitations.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2021–08–02. The SNPRM published in the **Federal Register** on July 14, 2023 (88 FR 45109). The SNPRM was

prompted by the FAA's determination that the NPRM contained an inaccurate reference to a certain paragraph of EASA AD 2022–0083 and that a reduced compliance time of 90 days is necessary. In the SNPRM, the FAA proposed to require revising the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable, to incorporate the actions specified in paragraph (1) of the MCAI, described previously, except as discussed under ''Differences Between this AD and the MCAI.'' The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0083, which specifies instructions for accomplishing the actions specified in the applicable ALS, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved AMP by incorporating the limitations, tasks, and associated thresholds and intervals described in the ALS.

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**.

Differences Between This AD and the MCAI

EASA AD 2022–0083 applies to Arriel 2D, 2E, 2H, 2L2, and 2N model turboshaft engines, whereas this AD only applies to Model Arriel 2D and Arriel 2E engines. Arriel 2H, 2L2, and 2N engines are not U.S. type certificated.

Paragraph (1) of EASA AD 2022–0083 specifies to replace each component before exceeding the applicable life limit and, within the thresholds and intervals, accomplishing all applicable maintenance tasks after its effective date. Instead, this AD requires revising the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable, by incorporating the requirements specified in paragraph (1) of EASA AD 2022–0083 within 90 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affects 426 engines installed on helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the existing EMM or ICA and the operator's existing approved maintenance or inspection program.	1 work-hour × $85 per hour = $85 ..	$0	$85	$36,210

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–08–02, Amendment 39–21496 (86 FR 26651, May 17, 2021); and

■ b. Adding the following new airworthiness directive:

2023–22–03 Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Amendment 39–22587; Docket No. FAA–2022–1311; Project Identifier MCAI–2022–00624–E.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2021–08–02, Amendment 39–21496 (86 FR 26651, May 17, 2021).

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (type certificate previously held by Turbomeca, S.A.) Model Arriel 2D and Arriel 2E engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce new or more restrictive tasks and limitations for certain life-limited parts. The FAA is issuing this AD to prevent failure of life-limited parts. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, revise the ALS of the existing EMM or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, by incorporating the actions specified in paragraph (1) of European Union Aviation Safety Agency (EASA) AD 2022–0083, dated May 11, 2022 (EASA AD 2022–0083).

(2) The owner/operator (pilot) holding at least a private pilot certificate may perform the action required by paragraph (g)(1) of this AD for your engine and must enter compliance with the applicable paragraphs of this AD into the engine maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Provisions for Alternative Actions and Intervals

After the actions required by paragraph (g) of this AD have been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref Publication'' section of EASA AD 2022–0083.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0083, dated May 11, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0083, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this 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 26, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25527 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1404; Project Identifier MCAI–2023–00451–T; Amendment 39–22584; AD 2023–21–12]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by a report of missing insulation in the engine pylon area. This AD requires, for certain airplanes, inspecting the engine pylon structure for discrepancies and repair if necessary. This AD also requires revising the existing maintenance or inspection program, as applicable, to incorporate a new certification maintenance requirement (CMR) task. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1404; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; email: *thd.crj@mhirj.com;* website: *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1404.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The NPRM published in the **Federal Register** on July 12, 2023 (88 FR 44226). The NPRM was prompted by AD CF–2023–19, dated March 13, 2023 (Transport Canada AD CF–2023–19) (also referred to after this as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states there was a report of a missing 12-inch piece of insulation in the 14th stage bleed ducts installed in both left hand (LH) and right hand (RH) engine pylon areas.

In the NPRM, the FAA proposed to require, for certain airplanes, inspecting the engine pylon structure for discrepancies and repair if necessary. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate a new CMR task.

The FAA is issuing this AD to address missing or damaged insulation in the engine pylon area. The unsafe condition, if not addressed, could result in the bleed duct to radiate heat to the surrounding structure and, if not corrected, could lead to the loss of the structural integrity of the engine pylon and possible loss of the engine.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1404.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from Air Wisconsin Airlines and MHI RJ Aviation ULC (MHI RJ). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Refer New Temporary Revision

MHI RJ requested that the FAA revise the proposed AD to refer to MHI RJ Temporary Revision 2A–77, dated May 8, 2023, which was issued to revise the phase-in (initial) compliance time in MHI RJ Temporary Revision 2A–76, dated September 29, 2022, from 40 months to 48 months.

The FAA concurs with the request and has revised paragraph (h) of this AD to refer to MHI RJ Temporary Revision 2A–77, dated May 8, 2023, for the new CMR task. The FAA has also provided credit for using MHI RJ Temporary Revision 2A–76, dated September 29, 2022, in paragraph (j)(2) of this AD. The CMR task and interval is the same in both temporary revisions. In addition, there is no change to initial compliance time because paragraph (j) of the proposed AD did not refer to MHI RJ Temporary Revision 2A–76, dated September 29, 2022, for the initial compliance time and instead specified ''The initial compliance time for doing the task is within 48 months or 6,600 flight hours, whichever occurs first after the effective date of this AD.'' The compliance time change in MHI RJ Temporary Revision 2A–77, dated May 8, 2023, is within the initial compliance time specified in this AD.

Request To Revise Compliance Time

MHI RJ stated it noticed that the FAA is re-starting the clock in paragraph (h) of the proposed AD from the effective date of the AD rather than the issue date of the temporary revision: MHI RJ states that the task interval should start from September 29, 2022, which is the issue date of MHI RJ Temporary Revision 2A–76. MHI RJ stated that, in this particular case, the start of the compliance from September 29, 2022, is critical for safety. The FAA infers that MHI RJ is requesting that the agency reduce the initial compliance time specified in paragraph (h) of this AD by referring to the September 29, 2022, date instead of the effective date of this AD.

The FAA acknowledges MHI RJ's concern. However, reducing the compliance time in paragraph (h) of this AD would result in a more restrictive compliance time that would necessitate issuing a supplemental NPRM, delaying the issuance of the final rule. Since the detailed visual inspection of spar FS654.50, spar FS672.20, and the firewall for discrepancies specified in paragraph (g) of this AD would be delayed if a supplemental NPRM is issued, any increase in the level of safety by reducing the compliance time in paragraph of (h) of this AD may be offset by delaying the inspections in paragraph (g) of this AD. The FAA has determined to delay this action is not appropriate in this case as the compliance times in this AD will ensure an acceptable level of safety.

Request To Clarify Compliance Time

Air Wisconsin Airlines asked if the ''40 months'' specified in MHI RJ Temporary Revision 2A–76, dated September 29, 2022, is in error. Air Wisconsin Airlines noted that both paragraphs (g) and (h) of the proposed AD mention ''within 48 months.''

The FAA agrees to clarify. As stated previously, MHI RJ Temporary Revision 2A–76, dated September 29, 2022, was revised by MHI RJ Temporary Revision 2A–77, dated May 8, 2023, to correct the ''40 months'' and change it to ''48 months.'' The FAA has not changed this AD in this regard.

Request To Revise Language in Paragraph (e) of the Proposed AD

MHI RJ requested that the proposed AD should not only mention missing insulation but damaged insulation as well and stated the sentence in paragraph (e) of the proposed AD should read: ''The FAA is issuing this AD to address missing or damaged insulation in the engine pylon area.''

The FAA concurs and has revised paragraph (e) of this AD accordingly. The tasks associated with the new CMR task specifies inspecting for damaged insulation as well as missing insulation. Therefore, it is accurate to state that the FAA is issuing this AD to address both conditions.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023. This service information specifies procedures for doing a detailed visual inspection of spar FS654.50, spar FS672.20, and the firewall for discrepancies, including corrosion, cracks, web waviness or flatness and damaged fasteners.

The FAA reviewed MHI RJ Temporary Revision 2A–77, dated May 8, 2023. This service information specifies a new CMR task, number C36–12–133–01, ''Detailed Visual Inspection for missing insulation/heat shield on the 14th stage bleed duct, running through the pylon area between FS654 and FS672.''

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

Costs of Compliance

The FAA estimates that this AD affects 338 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$172,380

* This table does not include the cost of revising the existing maintenance or inspection program.

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. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–21–12 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22584; Docket No. FAA–2023–1404; Project Identifier MCAI–2023–00451–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a report of missing insulation in the engine pylon area. The FAA is issuing this AD to address missing or damaged insulation in the engine pylon area. The unsafe condition, if not addressed, could result in the bleed duct to radiate heat to the surrounding structure and, if not corrected, could lead to the loss of the structural integrity of the engine pylon and possible loss of the engine.

(f) Compliance

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

(g) Detailed Visual Inspection

For airplanes having serial numbers 7031, 7045, 7069, 7078, 7089, 7102, 7110, 7168, 7188, 7203, 7212, 7217, 7229, 7231, 7236, 7243, 7257, 7258, 7269, 7271, 7276, 7284, 7290, 7302, 7304, 7306, 7310, 7328, 7339, 7342, 7355, 7358, 7360, 7401, 7404, 7437, 7441, 7448, 7458, 7474, 7476, 7479, 7495, 7502, 7503, 7517, 7527, 7530, 7532, 7548, 7551, 7574, 7575, 7579, 7582, 7586, 7588, 7599, 7600, 7606, 7609, 7623, 7632, 7648, 7657, 7658, 7664, 7667, 7674, 7681, 7682, 7683, 7687, 7715, 7727, 7743, 7748, 7749, 7750, 7758, 7760, 7769, 7780, 7810, 7817, 7818, 7821, 7822, 7857, 7859, 7871, 7873, 7889, 7892, 7895, 7909, 7912, 7913, 7920, 7922, 7923, 7926, 7929, 7932, 7935, 7937, 7954, 7961, 7964, and 8011: Within 48 months or 6,600 flight hours, whichever occurs first after the effective date of this AD, do a detailed visual inspection for discrepancies of spar FS654.50, spar FS672.20, and the firewall, in accordance with Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023. If any discrepancies are found, before further flight, repair using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(h) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or

inspection program, as applicable, to incorporate the information specified in MHI RJ Temporary Revision 2A–77, dated May 8, 2023, for certification maintenance requirements task number C36–12–133–01. The initial compliance time for doing the task is within 48 months or 6,600 flight hours, whichever occurs first after the effective date of this AD.

(i) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Service Bulletin 601R–54–006, dated September 13, 2022.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Temporary Revision 2A–76, dated September 29, 2022.

(k) 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, International Validation Branch, mail it to the address identified in paragraph (l)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Additional Information

(1) Refer to Transport Canada AD CF–2023–19, dated March 13, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1404.

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

(m) Material Incorporated by Reference

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

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

(i) MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023.

(ii) MHI RJ Temporary Revision 2A–77, dated May 8, 2023.

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

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

(5) You may view this material 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 20, 2023.

Ross Landes,

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

[FR Doc. 2023–25494 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1399; Project Identifier MCAI–2022–01533–E; Amendment 39–22585; AD 2023–22–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–15–07 for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) (type certificate previously held by Rolls-Royce plc) Model RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 engines. AD 2020–15–07 required replacement of the low-pressure turbine (LPT) stage 1 disk with part number (P/N) UL37606, UL37607, UL37608, UL37722, or UL37790, installed. This AD was prompted by an updated analysis by the engine manufacturer, which indicates certain part-numbered and serial-numbered LPT stage 1 disks that have undergone rework could fail before the current published life limits. This AD retains the requirement to replace the LPT stage 1 disk and includes additional LPT stage 1 disks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 26, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1399; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1399.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–15–07,

Amendment 39–21170 (85 FR 43682, July 20, 2020) (AD 2020–15–07). AD 2020–15–07 applied to RRD RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 model turbofan engines with LPT stage 1 disks, P/N UL37606, UL37607, UL37608, UL37722, or UL37790, installed. AD 2020–15–07 required replacement of the LPT stage 1 disk before it reaches its new Declared Safe Cycle Limit (DSCL) or within 25 flight cycles after the effective date of the AD, whichever occurs later. The FAA issued AD 2020–15–07 to prevent failure of the LPT stage 1 disk.

The NPRM published in the **Federal Register** on July 12, 2023 (88 FR 44235). The NPRM was prompted by AD 2022–0237, dated December 2, 2022 (EASA AD 2022–0237) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that further investigation by the manufacturer identified additional part-numbered LPT stage 1 disks affected by the unsafe condition. As a result of this finding, RRD published revised service information, which includes the additional affected LPT stage 1 disk P/Ns.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1399.

In the NPRM, the FAA proposed to include additional LPT stage 1 disks and require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of the NPRM. The FAA is issuing this AD to prevent failure of the LPT stage 1 disk, which if not addressed, could result in uncontained release of high-energy debris from the engine, in-flight shutdown of the engine, damage to the engine, and damage to the airplane.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0237, which specifies procedures for replacement of the LPT stage 1 disk and reducing the DSCL for LPT stage 1 disks.

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.**

Costs of Compliance

The FAA estimates that this AD affects 18 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT stage 1 disk	120 work-hours × $85 per hour = $10,200	$30,000	$40,200	$723,600

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–15–07, Amendment 39–21170 (85 FR 43682, July 20, 2020); and

■ b. Adding the following new airworthiness directive:

2023–22–01 Rolls-Royce Deutschland Ltd. & Co. KG: Amendment 39–22585; Docket No. FAA–2023–1399; Project Identifier MCAI–2022–01533–E.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2020–15–07, Amendment 39–21170 (85 FR 43682, July 20, 2020).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co. KG (RRD) Model RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an updated analysis by the engine manufacturer, which indicates certain part-numbered and serial-numbered low-pressure turbine (LPT) stage 1 disks that have undergone rework could fail before the current published life limits. The FAA is issuing this AD to prevent failure of the LPT stage 1 disk. The unsafe condition, if not addressed, could result in uncontained release of high-energy debris from the engine, in-flight shutdown of the engine, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0237, dated December 2, 2022 (EASA AD 2022–0237).

(h) Exceptions to EASA AD 2022–0237

(1) Where EASA AD 2022–0237 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0237.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0237, dated December 2, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0237, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website:*easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this 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 25, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25517 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 9981]

RIN 1545–BJ23

Requirements for Type I and Type III Supporting Organizations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to Treasury Decision 9981, which was published in the **Federal Register** for Monday, October 16, 2023. Treasury Decision 9981 issued final regulations providing guidance on the prohibition on certain gifts or contributions to Type I and Type III supporting organizations from persons who control a supported organization and on certain other requirements for Type III supporting organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006.

DATES: This correction is effective on November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Gruccio at (202) 317–4541 (not a toll-free number), or Don Spellman at (202) 317–4086 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9981) that are the subject of this correction are under section 509(a) of the Code.

Corrections to Publication

Accordingly, the final regulations (TD 9981) that are the subject of FR Doc. 2023–22286, published on October 16, 2023, are corrected on page 71298, in the first column, the sixth through eighth lines under the heading ''Statement of Availability of IRS Documents'' are corrected to read ''visiting the IRS website at: *https://www.irs.gov/irb/2014-02_IRB#NOT-2014-4*''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications & Regulations Branch, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2023–25510 Filed 11–17–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC83

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury is issuing an interim final rule to amend the definition of ''obligation'' set forth in the Department's regulations with respect to the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act of 2021.

DATES:

Effective date: The provisions in this interim final rule are effective November 20, 2023.

Comment date: Comments must be received on or before December 20, 2023.

ADDRESSES: Please submit comments electronically through the Federal

eRulemaking Portal at *http://www.regulations.gov.* Comments may be mailed to the Office of Recovery Programs, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. All comments should be captioned with ''Coronavirus State and Local Fiscal Recovery Funds Obligation Interim Final Rule Comments.'' Please include your name, organization affiliation, address, email address, and telephone number in your comment. Where appropriate, a comment should include a short executive summary. In general, comments received will be posted at *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jessica Milano, Chief Recovery Officer, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law.[1] The ARPA amended Title VI of the Social Security Act to add sections 602 and 603, which established the State and Local Fiscal Recovery Funds (SLFRF).[2] The SLFRF program provides support to State, local, territorial, and Tribal governments (together, recipients) to mitigate the fiscal effects of the COVID–19 public health emergency.[3] As enacted in 2021, recipients are authorized to use SLFRF award funds to respond to the COVID–19 public health emergency or its negative economic impacts; to provide premium pay to essential workers; to provide government services to the extent of a reduction in a recipient's revenue due to the COVID–19 public health emergency; or to make necessary investments in water, sewer, or broadband infrastructure.[4] On November 15, 2021, the Infrastructure Investment and Jobs Act amended the SLFRF program to authorize recipients to use funds to satisfy any non-federal match requirement of an authorized Bureau of Reclamation project.[5] On December 29, 2022, the Consolidated Appropriations Act, 2023 (2023 CAA), further amended the SLFRF program to authorize recipients to use funds to provide emergency relief from natural disasters or their negative economic impacts; to use funds for projects eligible under certain Department of Transportation programs (Surface Transportation projects); and to use funds for projects that are eligible under Title I of the Housing and Community Development Act of 1974 (Title I projects).[6] The 2023 CAA also codified the $10 million ''standard allowance'' under the revenue loss eligible use category.[7]

In May 2021, Treasury published an interim final rule (2021 IFR) that implemented the SLFRF program as established by the ARPA.[8] In January 2022, Treasury published a final rule (2022 final rule), which responded to comments received on the 2021 IFR, made several clarifications to the 2021 IFR, and took effect on April 1, 2022.[9] In September 2023, Treasury published an additional interim final rule (2023 IFR) to implement the changes made to the SLFRF program by the 2023 CAA.[10] The 2023 IFR generally did not change the eligible uses discussed in the 2022 final rule.

Sections 602 and 603 of the Social Security Act provide that SLFRF funds may only be used to cover costs incurred by December 31, 2024.[11] The term ''cost incurred'' does not have a precise meaning in this context. One approach to implementing this requirement might have been to have set December 31, 2024, as the end of the period of performance for SLFRF awards. However, Congress expressly provided for water, sewer, and broadband projects as eligible uses of the SLFRF. If Treasury had set the end of period of performance as December 31, 2024, such that recipients would have had to not only obligate funds but complete expenditures by that date, it would have been very difficult for recipients to engage in significant water, sewer, and broadband projects. Instead, Treasury implemented the statutory requirement by providing that a cost is considered incurred by December 31, 2024, if a recipient has incurred an obligation with respect to the cost by December 31, 2024.[12] Treasury defined ''obligation'' as ''an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment,''[13] which is based on the definition of ''financial obligations'' in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).[14] Treasury then set the period of performance as ending on December 31, 2026, which serves as the deadline for expenditures. Treasury's approach was confirmed by Congress in the amendments made to the SLFRF program in the CAA 2023. In providing authority for recipients to use SLFRF funds for the new eligible use categories, Congress expressly provided for the same framework of separate obligation and expenditure deadlines as is provided for in Treasury's SLFRF award terms and conditions and rule. Specifically, the CAA 2023 amendments provided that funds may be obligated for Surface Transportation projects and Title I projects until December 31, 2024, and must be expended by September 30, 2026.

II. Revision to the Definition of Obligation in 31 CFR 35.3 and Related Guidance Updates

Treasury is amending the definition of ''obligation'' to provide additional flexibility to recipients, providing clarification regarding the application of the obligation deadline to subrecipients, and providing guidance regarding the amendment and replacement of contracts and subawards. Additional guidance from Treasury regarding

[1] Public Law 117–2 (Mar. 11, 2021).

[2] *See* section 9901 of the ARPA, codified at 42 U.S.C. 802 and 803.

[3] *See id.* Sec. 802(a)(1), 803(a).

[4] *See id.* Sec. 802(c)(1), 803(c)(1).

[5] Section 40909, Public Law 117–58, 135 Stat. 429 (Nov. 15, 2021).

[6] *See* section 102 of Division LL of Public Law 117–328, 136 Stat. 4459 (Dec. 29, 2022).

[7] *See id.*

[8] 86 FR 26786 (May 17, 2021).

[9] 87 FR 4338 (Jan. 27, 2022).

[10] 88 FR 64986 (Sept. 20, 2023).

[11] 42 U.S.C. 802(c)(1), 803(c)(1). A recipient must return any funds not obligated by December 31, 2024. 31 CFR 35.5(c).

[12] 31 CFR 35.5(b). Typically, financial obligations incurred under a federal award must be liquidated no later than 120 calendar days after the end date of the period of performance specified in the terms and conditions of the award. This expenditure period exists to allow recipients time to receive goods ordered and make final payments. *See* 2 CFR 200.344.

[13] 31 CFR 35.3.

[14] 2 CFR 200.1 (defining ''financial obligation,'' when referencing a recipient's or subrecipient's use of funds under a Federal award, as orders placed for property and services, contracts and subawards made, and similar transactions that require payment). This definition aligns with a plain language understanding of ''incur'' as meaning to become liable or subject to something. *See, e.g.,* Webster's Third Int'l Dictionary (1961) (''to become liable or subject to: bring down upon oneself''); Black's Law Dictionary, 11th ed. 2019 (''to suffer or bring on oneself (a liability or expense)''); American Heritage Dictionary (5th ed. 2022) (''to become liable or subject to as a result of one's actions; bring upon oneself'').

closeout and specific deadlines by which recipients must return funds not obligated or expended will be forthcoming.

Amendment to the Definition of ''Obligation''

Recipients have identified for Treasury that they anticipate difficulty using SLFRF funds to satisfy administrative and other legal requirements applicable to the SLFRF program after the obligation deadline has passed. The expenses associated with these requirements include payroll and benefits of personnel responsible for compliance and reporting and expenses of maintaining records. Recipients will not have incurred an obligation to make many of these types of expenditures prior to the obligation deadline. For example, Treasury understands that recipient personnel costs are typically obligated with respect to one pay period at a time because recipient personnel generally are not subject to long-term employment contracts. As such, expenses of personnel needed to comply with administrative and other legal requirements between the obligation deadline and the end of the period of performance could not be paid for using SLFRF funds (or at least, not after the end of the last pay period that begins prior to the obligation deadline). To the extent that recipients have been covering such expenses and other related administrative expenses under their current negotiated indirect costs rate agreement established with their federal cognizant agency or using the *de minimis* rate of 10 percent of modified total direct costs pursuant to 2 CFR 200.414(f), they may continue to do so, and this interim final rule will also provide recipients with an additional way to cover such costs when they are charged directly.

In this interim final rule, Treasury is amending the definition of ''obligation'' previously adopted at 31 CFR 35.3 in response to recipients' concerns. Under the revised definition, an ''obligation'' continues to include an order placed for property and services and entry into contracts, subawards, and similar transactions that require payment. However, under the revised definition, a recipient is also considered to have incurred an obligation by December 31, 2024, with respect to a requirement under federal law or regulation or a provision of the SLFRF award terms and conditions to which the recipient becomes subject as a result of receiving or expending SLFRF funds. A recipient may use the SLFRF funds to cover the cost of meeting such a requirement. Such expenditures include the following:

- *Reporting and compliance requirements:* Funds expended to comply with SLFRF reporting and compliance requirements, including in connection with the preparation and submission of recipients' required reports, review of subaward reports or subrecipient monitoring generally, maintenance of data and reporting tools, and review and processing of invoices.
- *Single Audit costs:* Funds expended for the conduct of audits required by the Single Audit Act, including on audit costs, on preparation for such audits, and on audit resolution, including funds spent by pass-through entities to carry out their responsibilities related to audit resolution of subawards.
- *Record retention and internal control requirements:* Expenditures to comply with records retention requirements and other expenditures necessary to ensure program integrity through the closeout of the award.
- *Property standards:* Expenditures on insurance, inventory and other recordkeeping requirements, and maintenance of equipment and other expenditures made to comply with the property standards of the Uniform Guidance (2 CFR 200.310–200.316).
- *Environmental compliance requirements:* Expenditures to comply with environmental requirements, including to obtain environmental permit renewals.
- *Civil rights and nondiscrimination requirements:* Expenditures related to comply with civil rights and nondiscrimination requirements, including the investigation of complaints arising from SLFRF-funded projects.

In each case, these would include costs, calculated in compliance with the rules for compensation charged to federal awards set out at 2 CFR 200.430, of recipient personnel whose time is required to comply with these requirements.

To take advantage of this additional flexibility, recipients must (1) determine the amount of SLFRF funds the recipient estimates it will use to cover such expenditures, (2) document a reasonable justification for this estimate, (3) report that amount to Treasury by April 30, 2024, with an explanation of how the amount was determined, and (4) report at award closeout the final amount expended for these costs. Recipients may not include within this estimate any expenditure that will be made after December 31, 2026, other than administrative expenditures necessary to close out the SLFRF award in accordance with the Uniform Guidance. Other than such closeout expenditures, recipients must expend all SLFRF funds by the end of the period of performance regardless of whether they continue to have expenses of the type outlined above after that date. A recipient's estimate of the amount that it expects to expend must be reasonable, based on the considerations listed at 2 CFR 200.404. If a recipient's estimate exceeds what is ultimately expended, the recipient must return the excess funds to Treasury. Treasury will update the SLFRF Compliance and Reporting Guidance to reflect the additional reporting requirements.

In response to suggestions from recipients, Treasury considered whether ''costs incurred'' could be defined by reference to a standard other than ''obligation.'' However, for the reasons discussed above, the revised definition of ''obligation'' provides the best and most reasonable interpretation of the statutory requirement for recipients to incur costs by December 31, 2024. For example, some recipients recommended that Treasury revise the rule to define ''costs incurred'' by reference to recipient appropriation, budget, or allocation processes. This approach would not provide a standard that could be applied consistently across recipients. Further, as noted above, Congress, in the amendments made by the 2023 CAA with respect to the SLFRF program, has confirmed the definition of ''costs incurred'' by reference to the obligation of funds. The 2023 CAA was more specific than the ARPA, providing that SLFRF funds ''shall remain available for obligation'' for Surface Transportation projects and Title I projects until December 31, 2024, and that funds obligated for such uses must be expended by September 30, 2026.

Treasury is also amending the provision of the rule requiring repayment of amounts not obligated and expended by the applicable deadlines to align with the amendment to the definition of ''obligation.'' Pursuant to the amended definition, recipients must still return to Treasury any SLFRF funds not obligated by December 31, 2024, pursuant to entry into a contract or subaward, but need not at that time pay back the amounts they previously reported to Treasury as estimates of the amounts that they will use during the remainder of the period of performance to comply with legal requirements; recipients will be required to repay after December 31, 2026, any part of the estimated amount that is not expended.

Application of Obligation Deadline to Subrecipients

Recipients have asked whether the December 31, 2024, obligation deadline applies to subrecipients. Treasury is clarifying that subrecipients are not subject to this deadline. As stated in the SLFRF rule and as referenced above, Treasury defined obligation to include entry into a subaward. A cost is considered to have been incurred once a recipient enters into a subaward that obligates the recipient to cover that cost. Once a recipient has obligated funds, the requirement in the statute and Treasury's rule to obligate funds by December 31, 2024, has been satisfied, such that subrecipients need not themselves also obligate funds received under a subaward by December 31, 2024. (Contractors also do not need to obligate funds received under a contract by December 31, 2024.) It remains the case that all SLFRF award funds must be expended by the recipient and any subrecipients by 2026, given the termination of the period of performance on December 31, 2026. In the case of funds used for Title I projects and Surface Transportation projects, all funds must be expended by September 30, 2026. Further, as the provisions of the Uniform Guidance are generally applicable to the SLFRF program, recipients must comply with the Uniform Guidance provisions regarding the timing of payment to subrecipients as provided in 2 CFR 200.305.

Amendment and Replacement of Contracts and Subawards

Recipients have asked to what extent they may, after December 31, 2024, amend or replace contracts and subawards entered into prior to that date. In general, recipients may not re-obligate funds or obligate additional funds after the obligation deadline because to do so would violate the statutory deadline by which costs must be incurred. For example, if a contractor requests an unexpected change order due to a cost increase that requires a contract amendment after December 31, 2024, the recipient would not be permitted to obligate additional SLFRF funds to the project because the December 31, 2024, obligation deadline would have passed and the recipient would be required to return to Treasury any funds that had not been obligated by that date.[15]

Treasury is clarifying that after December 31, 2024, recipients are permitted to replace a contract or subaward entered into prior to December 31, 2024, if:

(1) the recipient terminates the contract or subaward because of the contractor or subawardee's default, because the contractor or subawardee goes out of business, or because the recipient otherwise determines that the contractor or subawardee will not be able to perform under the contract or carry out the subaward; or

(2) the recipient and contractor or subrecipient mutually agree to terminate the contract or subaward for convenience;[16] or

(3) the recipient terminates the contract or subaward for convenience if the contract or subaward was not properly awarded (such as if the contractor was not eligible to receive the contract), there is clear evidence that the contract or subaward was improper, the recipient documents its determination that the contract or subaward was not properly awarded, and the original contract or subaward was entered into by the recipient in good faith.

A contract will be considered made in good faith for purposes of clause (3) above if the parties followed standard procurement or subaward practices, as applicable, and the contract or subaward was not entered into for the purpose of evading the obligation deadline. A recipient that re-obligates funds to a new contractor or subrecipient after the obligation deadline will be considered to have used its funds to cover an obligation incurred prior to the obligation deadline if any of the three situations above is present and if the original contract or subaward being replaced was entered into by December 31, 2024.

If a recipient enters into a replacement contract or subaward, the recipient still must expend all funds by the expenditure deadline. Treasury will update the SLFRF Compliance and Reporting Guidance to provide a means for recipients to report any contract or subaward replacements after the December 31, 2024, obligation deadline. Recipients should maintain documentation to justify their determinations, which should include an analysis of the factors discussed above. Treasury may ask recipients to provide this information in their periodic reports.

III. Public Comments and Effective Date

Treasury is seeking comment from recipients regarding this interim final rule, and in particular, responses to the following question: *What are the advantages and disadvantages of the change made by this interim final rule to the definition of ''obligation''?*

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of the amendment to the definition of ''obligation'' at 31 CFR 35.3. Immediate implementation of this amendment will enable recipients to complete their internal budgeting processes in time to meet the statutory deadline to incur costs by December 31, 2024. As discussed below, the requirements of advance notice and public comment do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' This interim final rule revises the standard pursuant to which recipients satisfy the statutory requirement to incur costs for eligible uses of SLFRF funds by December 31, 2024. In addition and as discussed below, the Administrative Procedure Act provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of this interim final rule. These comments must be received on or before December 20, 2023.

IV. Regulatory Analyses

Executive Order 12866

This interim final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim final rule does not have federalism implications within the meaning of the Executive Order and

[15] *See* 31 CFR 35.5(c).

[16] Note that the Uniform Guidance provides that ''all contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity.'' See Appendix II.(B) to 2 CFR part 200.

does not impose substantial, direct compliance costs on state, local, territorial, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, territorial, and Tribal governments by sections 602 and 603 of the Social Security Act. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' This interim final rule implements statutory conditions on recipients' eligible uses of their SLFRF award funds. The rule is thus ''both clearly and directly related to a federal grant program.'' *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the ''process necessary to maintain state . . . eligibility for federal funds,'' id., as well as other ''integral part[s] of the grant program,'' *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B); see also 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule''). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. As discussed above, Congress authorizes recipients to use SLFRF funds for costs incurred for eligible purposes by December 31, 2024. Given the rapidly approaching deadline, there is an urgent need for recipients to undertake the planning necessary for sound fiscal policymaking, which requires clarity on how SLFRF funds will augment and interact with existing budgetary resources. Treasury understands that many recipients require immediate rules on which they can rely, especially in light of the approaching obligation deadline. This statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

This rule is not a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number. This interim final rule is not altering the previously approved information collections for the SLFRF program. The table below includes the estimates of hourly burden under this program that have been approved in previously approved information collections.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
NEU Agreements and Supporting Documentation	26,000	1	26,000	.5	13,000	634,400
Project and Expenditure Report (quarterly)	2,000	4	8,000	6	48,000	2,342,400
Project and Expenditure Report (annual)	29,000	1	29,000	6	174,000	8,491,200
Total	64,770		78,880		284,209	13,869,339

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Regulatory Flexibility Analysis

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

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Community development, Disaster assistance, Executive compensation, Public health emergency, State and Local Governments, Transportation, Tribal Governments.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as set forth below:

PART 35—PANDEMIC RELIEF PROGRAMS

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); section 102(c) of Division LL of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

■ 2. Amend § 35.3 by adding a new sentence at the end of the definition of ''Obligation'' to read as follows:

§ 35.3 Definitions.

* * * * *

Obligation * * * An obligation also means a requirement under federal law or regulation or provision of the award terms and conditions to which a recipient becomes subject as a result of receiving or expending funds.

* * * * *

■ 3. Revise § 35.5(c) to read as follows:

§ 35.5 Use of funds.

* * * * *

(c) *Return of funds.* A recipient must return any funds that have not been obligated by December 31, 2024, pursuant to orders placed for property and services or entry into contracts, subawards, and similar transactions that require payment other than funds in the amount reported to Treasury by April 30, 2024, as the estimate of funds that the recipient will expend to comply with a requirement under federal law or regulation or provision of the award terms and conditions to which a recipient becomes subject as a result of receiving or expending funds. A recipient must return funds obligated for a use identified in § 35.6(b) through (g) by December 31, 2024, but not expended by December 31, 2026. A recipient must return funds obligated for a use identified in § 35.6(h) by December 31, 2024, but not expended by September 30, 2026. A recipient must return funds in the amount reported to Treasury by April 30, 2024, as referenced above, but not expended by December 31, 2026, other than administrative expenses necessary to close out the award.

Jessica A. Milano,

Chief Recovery Officer, Office of Recovery Programs.

[FR Doc. 2023–25067 Filed 11–17–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0865]

RIN 1625–AA00

Safety Zone; Oswego River, Oswego, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 210-foot radius of a pedestrian bridge and the surrounding Oswego River in Oswego, NY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Buffalo.

DATES: This rule is effective from 5:15 p.m. through 6:45 p.m. November 25, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0865 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT William Kelley, Waterways Management at Sector Buffalo, U.S. Coast Guard; telephone 716–843–9343, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo has determined that fireworks over the water presents significant risks to public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 5:15 p.m. through 6:45 p.m. on November 25, 2023. The safety zone will cover all navigable waters within a 210-foot radius of land launched fireworks over the Oswego River in Oswego, NY. The duration of the zone is intended to protect spectators, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will encompass a 210-foot radius of land launched fireworks in the Oswego River, in Oswego, NY, lasting approximately 1.5 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 1.5 hours that will prohibit entry within a 210-foot radius on the Oswego River, in Oswego, NY. for a fireworks display. It is categorically excluded from further review under paragraph L60(a)of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0865 to read as follows:

§ 165.T09–0865 Safety Zone; Oswego River, NY.

(a) *Location.* The following area is a safety zone: All waters of the Oswego River, from surface to bottom, encompassed by a 210-foot radius around 43°27′15.18″ N 76°30′27.89″ W.

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP Buffalo or a designated representative.

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

(d) *Enforcement period.* The regulated area described in paragraph (a) is effective from 5:15 p.m. through 6:45 p.m. on November 25, 2023.

Dated: November 9, 2023.

M.I. Kuperman,

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

[FR Doc. 2023–25582 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0385]

RIN 1625–AA87

Security Zone; Helicopter Crash, Read Island, AK

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for all navigable waters within a 2 nautical miles radius of Read Island, AK, centered at Latitude: 57°06′48.3″ N, Longitude: 133°11′43.4″ W, where a MH–60 Jayhawk Helicopter crashed (CG–6016), early on Tuesday, November 14, 2023. This security zone is needed to protect and preserve the crash site of the MH–60 Helicopter wreck. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Southeast Alaska or a designated representative.

DATES: This rule is effective without actual notice from November 20, 2023, through January 13, 2024. For the purposes of enforcement, actual notice will be used from November 14, 2023, through November 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0385 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Catherine E. Cavender, Sector Southeast Alaska Waterways Management Division, U.S. Coast Guard; telephone 907–463–2846, email *Catherine.E.Cavender@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
COTP Captain of the Port Sector Southeast Alaska
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
NM Nautical Miles
COTP Captain of the Port
DNR Alaska Department of Natural Resources

II. Background Information and Regulatory History

On November 14, 2023, a Coast Guard MH–60 Jayhawk Helicopter crashed on Read Island, AK, while responding to a disabled vessel. The MH–60 helicopter is still on Read Island and must remain in place for the appropriate investigations and hazardous materials cleanup to take place. The purpose of the temporary security zone is to facilitate the security and preserve the crash site of the MH–60 helicopter.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to facilitate the ongoing investigation at the crash site. Publishing a NRPM is impracticable and contrary to public interest because the security zone must be established as soon as possible to enhance public and maritime safety and security and to protect personnel, vessels, and the marine environment in the navigable waters within the security zone from potential hazards created by the MH–60 Helicopter crash site.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect the MH–60 Helicopter crash site, mitigate potential maritime threats, and enhance maritime safety and security.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port Sector Southeast Alaska (COTP) has determined that potential hazards associated with ongoing salvage and safety investigation measures, will be a safety concern for anyone within a 2 nautical miles radius of Read Island, centered at Latitude: 57°06′48.3″ N, Longitude: 133°11′43.4″ W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the security zone from potential hazards created by the MH–60 Helicopter crash site.

IV. Discussion of the Rule

This rule establishes a security zone from 5 p.m. November 14, 2023, until 11:59 p.m. on January 13, 2024. The security zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the hazardous materials cleanup at the MH–60 Helicopter crash site and the ongoing safety investigation. The security zone will cover all navigable waters within a 2 nautical miles radius of Read Island, centered at Latitude: 57°06′48.3″ N, Longitude: 133°11′43.4″ W to conduct salvage and gather evidence pursuant to the safety investigation. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the hazardous materials cleanup and during the safety investigation. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, remote location, and 60-day duration of the security zone. Vessel traffic will be able to safely transit around this security zone which would impact a designated area of Farragut Bay for 60 days when vessel traffic is normally low due to deteriorating weather and reduced daylight. The surrounding land and islands are owned predominantly by the United States Forest Service via Tongass National Forest and the State of Alaska Department of Natural Resources (DNR) owns Read Island. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine Channel 16 about the zone, and local Coast Guard assets enforcing the zone would reiterate the rule. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the security zone when permitted by the COTP or a designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only 60 days that will prohibit entry within a 2 nautical miles radius of Read Island, centered at Latitude: 57°06′48.3″ N, Longitude: 133°11′43.4″ W, where ongoing salvage and safety investigation measures occur. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T017–0385 to read as follows:

§ 165.T017–0385 Security Zone; Helicopter Crash, Read Island, AK.

(a) *Location.* The following area is a security zone: All navigable waters

within a 2 nautical miles radius of Read Island, AK, centered at Latitude: 57°06′48.3″ N, Longitude: 133°11′43.4″ W.

(b) *Definitions.* As used in this section, the term *designated representative* means a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of U.S. Coast Guard Sector Southeast Alaska.

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

(2) Vessels requiring entry into the security zone must request permission from the COTP or a designated representative. To seek entry into the security zone, contact the COTP or the COTP's representative by telephone at (907) 463–2991 or on VHF–FM Channel 16.

(3) Persons and vessels permitted to enter the security zone must transit at slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Enforcement period.* This section will be enforced from 5 p.m. November 14, 2023, through 11:59 p.m. on January 13, 2024.

Darwin A. Jensen,

Captain, U.S. Coast Guard, Captain of the Port, Sector Southeast Alaska.

[FR Doc. 2023–25635 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Ballot Mail Ancillary Service Endorsements

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) subsections 507.1.5.1 and 507.1.5.3, to remove Change Service Requested, as an ancillary service endorsement option for Ballot Mail.

DATES: *Effective date:* January 21, 2024.

FOR FURTHER INFORMATION CONTACT: Emily Matyas (202) 826–7157 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On September 29, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 67159) to remove Change Service Requested, Option 1, as an ancillary service endorsement option for Ballot Mail. The Postal Service did not receive any formal comments.

The Postal Service is clarifying that the notice of proposed rulemaking focused on removing ''Change Service Requested'', Option 1 and that Change Service Requested, Option 2 was not originally included in the Ballot Mail Ancillary Service Endorsement Federal Register Notice because Change Service Requested, Option 2 was never associated with any Ballot Mail STIDs. Only Change Service Requested, Option 1 was available for use. However, both Change Service Requested Options 1 and 2 permit all mailpieces that are undeliverable-as-addressed to be disposed of and it against postal policy to dispose of any ballot mailpiece. The Postal Service is providing a clarification, to avoid any misunderstanding, that will state that the endorsement ''Change Service Requested'', is not available for Ballot Mail.

Ballot Mail that is undeliverable as addressed must be forwarded to the voter if a Change of Address notice is on file or returned to the election office that sent the Ballot Mail.

We believe this revision will provide a more efficient mailing experience.

The Postal Service adopts the described changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

1.5.1 First-Class Mail, USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial, and Priority Mail

Undeliverable-as-addressed First-Class Mail (including postcards), USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial, and Priority Mail pieces are treated under Exhibit 1.5.1, with these additional conditions:

* * * * *

e. ''Change Service Requested'' is not permitted for the following:

[Revise item e by adding a new item e4 to read as follows:

* * * * *

4. First-Class Mail pieces containing Ballot Mail under 703.8.0.

* * * * *

Exhibit 1.5.1 Treatment of Undeliverable First-Class Mail, USPS Ground Advantage—Retail, USPS Ground Advantage—Commercial and Priority Mail

Mailer endorsement	USPS treatment of UAA pieces
* * * * *	
Change Service Requested.	
* * * * *	
Restrictions (for Options 1 and 2).	The following restrictions apply:

[Revise the ''Change Service Requested'' ''Restrictions'' section by adding a new number 3 to read as follows:]

3. This endorsement is not valid for Ballot Mail under 703.8.0.

* * * * *

1.5.3 USPS Marketing Mail and Parcel Select Lightweight

Undeliverable-as-addressed (UAA) USPS Marketing Mail and Parcel Select Lightweight pieces are treated as described in Exhibit 1.5.3, with these additional conditions:

* * * * *

[Revise the text of item c to read as follows:]

c. The endorsement ''Change Service Requested'' is not permitted for the following:

1. Pieces containing hazardous materials under 601.8.0. Pieces

containing hazardous materials must bear the endorsement ''Address Service Requested,'' ''Forwarding Service Requested,'' or ''Return Service Requested.''

2. Pieces containing Ballot Mail under 703.8.0.

* * * * *

Exhibit 1.5.3 Treatment of Undeliverable USPS Marketing Mail and Parcel Select Lightweight

Mailer endorsement	USPS treatment of UAA pieces
* * * * *	
''Change Service Requested'' [1 4].	Option 1.

Restrictions:

The following restrictions apply:

* * * * *

[Revise the ''Change Service Requested'' Option 1 ''Restrictions'' section by adding a new number 3 to read as follows:]

3. This endorsement is not valid for Ballot Mail under 703.8.0.

* * * * *

Option 2

* * * * *

Restrictions:

The following restrictions apply:

* * * * *

[Revise the ''Change Service Requested'' Option 2 ''Restrictions'' section by adding a new number 3 to read as follows:]

3. This endorsement is not valid for Ballot Mail under 703.8.0.

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–25569 Filed 11–17–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2022–0481; FRL–9630–02–OAR]

RIN 2060–AV78

New Source Performance Standards Review for Secondary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing amendments to the new source performance standards (NSPS) for secondary lead smelters pursuant to the periodic review required by the Clean Air Act (CAA). Specifically, the EPA is finalizing revisions to the NSPS that applies to affected secondary lead smelters constructed, reconstructed, or modified after December 1, 2022 (NSPS subpart La). The EPA is also finalizing amendments to the NSPS for secondary lead smelters constructed, reconstructed, or modified after June 11, 1973, and on or before December 1, 2022, (NSPS subpart L). In addition, we are finalizing the use of EPA Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) as an alternative for demonstrating compliance with the opacity limit.

DATES: This final rule is effective on November 20, 2023. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of November 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0481. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amber Wright, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4680; email address: *wright.amber@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ABR Association of Battery Recyclers
ASTM ASTM, International
BSER best system of emission reduction
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
DCOT digital camera opacity technique
EJ environmental justice
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FR Federal Register
HEPA high efficiency particulate air
IBR incorporation by reference
ICR information collection request
km kilometers
mg/dscm milligram per dry standard cubic meter
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PDF portable document format
PM particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
SOP standard operating procedures
SSM startup, shutdown, and malfunctions
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
VCS voluntary consensus standard
WESP wet electrostatic precipitator

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

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J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

The source category that is the subject of this final action is composed of secondary lead smelters regulated under CAA section 111, New Source Performance Standards (NSPS). The 2022 North American Industry Classification System (NAICS) code for the source category is 331492. The NAICS code serves as a guide for readers outlining the type of entities that this final action is likely to affect. The NSPS codified in 40 CFR part 60, subpart L are directly applicable to secondary lead smelters constructed, reconstructed, or modified after June 11, 1973, and on or before December 1, 2022. The NSPS codified in 40 CFR part 60, subpart La, are directly applicable to affected facilities that begin construction, reconstruction, or modification after December 1, 2022. Federal, state, local and tribal government entities would not be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, you should carefully examine the applicability criteria found in 40 CFR part 60, subparts L and La, and consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your state air pollution control agency with delegated authority for NSPS, or your EPA Regional Office.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action is available on the internet at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

A redline/strikeout version of the rules showing the final edits being made to incorporate the changes to 40 CFR part 60, subpart L and the new text for 40 CFR part 60, subpart La finalized in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2022–0481). Following signature by the EPA Administrator, the EPA also will post a copy of these documents to *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

C. Judicial Review and Administrative Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 19, 2024. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC West Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this final action?

The EPA's authority for this final rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards, or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' the NSPS. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has the discretion and authority to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to reflect ''the degree of emission limitation achievable through the application of the BSER which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The term ''standard of performance'' in CAA section 111(a)(1) makes clear that the EPA is to determine both the BSER for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(b)(5)

generally precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard. CAA section 111(h)(1) authorizes the Administrator to promulgate ''a design, equipment, work practice, or operational standard, or combination thereof'' if in his or her judgment, ''it is not feasible to prescribe or enforce a standard of performance.'' CAA section 111(h)(2) provides the circumstances under which prescribing or enforcing a standard of performance is ''not feasible,'' such as, when the pollutant cannot be emitted through a conveyance designed to emit or capture the pollutant, or when there is no practicable measurement methodology for the particular class of sources.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, reconstruction means the replacement of components of an existing facility such that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

B. How does the EPA perform the NSPS review?

As noted in section II.A. of this preamble, CAA section 111 requires the EPA to, at least every 8 years, review and, if appropriate, revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA revises the standards of performance, they must reflect the degree of emission limitation achievable through the application of the BSER considering the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, which may include consideration of the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry's overall capital expenditures and revenues. The Agency also considers cost effectiveness analysis as a useful metric and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost effectiveness analysis allows comparisons of relative costs and outcomes (effects) of 2 or more options. In general, cost effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the statutory factors, the EPA compares the various systems of emission reductions and determines which system is ''best,'' and therefore represents the BSER. The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In doing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources, and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the NSPS reflect the BSER under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

C. What is the source category regulated in this final action?

The EPA first promulgated NSPS for the secondary lead smelting source category on March 8, 1974 (39 FR 9308). These standards of performance are codified in 40 CFR part 60, subpart L, and are applicable to sources that commence construction, modification, or reconstruction after June 11, 1973. These standards of performance regulate emissions of PM from blast and reverberatory furnaces and specifies limits for visible emissions (opacity) for blast and reverberatory furnaces and for pot (refining) furnaces. The EPA amended NSPS subpart L on October 6, 1975 (40 FR 46250) to remove a provision providing that the failure to meet the NSPS emissions limits due to the presence of uncombined water in the stack gases was not considered a violation. In March 1979, the EPA reviewed the NSPS and analyzed possible revisions to the NSPS; however, the review did not result in any revisions to the NSPS subpart L at that time.[1]

The secondary lead smelting source category consists of facilities that produce lead and lead alloys from lead-bearing scrap material. Lead is used to make various construction, medical, industrial, and consumer products such as batteries, glass, x-ray protection gear, and various fillers. The secondary lead smelting process consists of: (1) pre-

[1] See *https://nepis.epa.gov/Exe/ZyPDF.cgi/91010O7P.PDF?Dockey=91010O7P.PDF.*

processing of lead bearing materials, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

At secondary lead smelting facilities, blast and reverberatory furnaces are used in the smelting processes, and pot furnaces are used in the refining process. The process exhaust from blast and reverberatory furnaces is a source of PM emissions, and emissions of PM also occur as process fugitives at various points during the smelting process, such as during charging and tapping of furnaces and refining processes. Entrainment of dry materials in ambient air due to material processing, vehicle traffic, wind erosion from storage piles, and other activities can also be a source of PM emissions.

Currently, there are 11 secondary lead smelting facilities in the United States and each facility operates furnaces that are subject to NSPS subpart L, which specifies that owners or operators of affected facilities must limit PM emissions from blast and reverberatory furnaces to not more than 50 milligrams per dry standard cubic meter (mg/dscm) or 0.022 grains per dry standard cubic feet (gr/dscf). Subpart L also specifies that visible emissions must not exceed 20 percent opacity from blast or reverberatory furnaces and 10 percent opacity from pot furnaces. Secondary lead smelting facilities use a variety of control devices (*e.g.,* baghouses, gas scrubbers), often in combination, to comply with the PM emissions and opacity limits of the NSPS.

The EPA proposed the current review and revisions of the secondary lead smelting source category NSPS subpart L on December 1, 2022 (87 FR 73708). We received four comment letters, including one from the industry trade association (the Association of Battery Recyclers, or ABR) and three from other stakeholders, during the comment period. Summaries of the more significant comments we timely received regarding the proposed rule and our responses are provided in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in *Summary of Public Comments and Responses on Proposed Rule: New Source Performance Standards for Secondary Lead Smelting (40 CFR part 60, subparts L and La) Best System of Emission Reduction Review, Final Amendments,* Docket ID No. EPA–HQ–OAR–2022–0481. In this action, the EPA is finalizing decisions and revisions pursuant to CAA section 111(b)(1)(B) review for the secondary lead smelting NSPS subpart L after our considerations of all the comments received.

III. What changes did we propose for the secondary lead smelting NSPS?

On December 1, 2022, the EPA proposed revisions to the NSPS for secondary lead smelters pursuant to CAA section 111(b)(1)(B) review of NSPS subpart L. In that action, the EPA proposed to establish a new subpart (40 CFR part 60, subpart La) applicable to affected sources that begin construction, reconstruction, or modification after December 1, 2022. The EPA proposed in the NSPS subpart La, revised standards for PM emissions and opacity for blast furnaces, reverberatory furnaces, and process fugitive emissions sources that apply at all times, including periods of SSM. The EPA proposed initial and periodic PM and opacity performance testing, recordkeeping, and reporting requirements. The EPA also proposed to revise the definitions for blast and reverberatory furnaces and added a new definition for pot furnaces.

The EPA also proposed to amend NSPS subpart L to clarify that NSPS subpart L applies to affected sources that commenced construction, reconstruction, or modification after June 11, 1973, and on or before December 1, 2022, and to update the NSPS furnace definitions, performance testing schedule, and monitoring, recordkeeping, and reporting requirements to be more consistent with the NESHAP (40 CFR part 63, subpart X). The EPA also proposed the IBR of an alternative method for determining opacity and the requirement for the submission of electronic performance test reports.

IV. What actions are we finalizing and what is our rationale for such decisions?

The EPA is finalizing revisions to the NSPS for secondary lead smelters pursuant to CAA section 111(b)(1)(B) review. The EPA is promulgating the NSPS revisions in a new subpart, 40 CFR part 60, subpart La. The revised NSPS subpart is applicable to affected sources constructed, modified, or reconstructed after December 1, 2022. This action also finalizes standards of performance in NSPS subpart La for PM emission and opacity that apply at all times including during periods of SSM and other proposed changes such as electronic reporting. Additionally, this action finalizes proposed revisions to the testing, monitoring, notification, recordkeeping, and reporting requirements, which are the same for both NSPS subparts L and La, and finalizes a definition for ''process fugitive emissions source'' in NSPS subpart La based on consideration of public comments.

A. Revised NSPS for Blast, Reverberatory, and Pot Furnaces

1. Proposed BSER for PM Emissions and Opacity

Based on the EPA's permit review and assessment of control costs and other CAA section 111 statutory considerations, the EPA proposed to identify for NSPS subpart La that the BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces is an afterburner followed by efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a high efficiency particulate air (HEPA) filter and/or a venturi scrubber). For new, modified, or reconstructed reverberatory and pot furnaces, the EPA proposed that the BSER for PM emissions and opacity is efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a HEPA filter, venturi scrubber and/or a wet electrostatic precipitator (WESP)).

Based on the available PM emissions and opacity data, the EPA proposed in NSPS subpart La that the standard of performance for blast and reverberatory furnaces that reflects the application of BSER is an emission limit of 10 mg PM/dscm. For pot furnaces, the EPA proposed in NSPS subpart La that the standard of performance that reflects the application of BSER is a PM emissions limit of 3 mg/dscm. The EPA also proposed that the standard of performance for opacity from blast, reverberatory, and pot furnaces emissions is 0 percent.

2. How the Final Revisions to BSER and the PM Emissions and Opacity Standards Differ From the Proposed Revisions

After considering the comments regarding the EPA's proposed BSER determinations for NSPS subpart La and the proposed PM emissions and opacity standards, the EPA is finalizing the BSER determinations and the PM standards for blast and reverberatory furnaces for NSPS subpart La, as proposed. However, after considering the comments and additional opacity data provided by one commenter, the EPA is finalizing the opacity limits for blast and reverberatory furnace in the final NSPS subpart La at 5 percent, rather than the proposed opacity standard of 0 percent. Also, the EPA is revising the PM limit for pot furnaces to address comments associated with the interaction of the proposed limit for pot

furnaces with the NESHAP subpart X requirements. In the final NSPS subpart La (40 CFR 60.122a(a)), the EPA is promulgating a definition for ''process fugitives emission source'' (see the discussion in section IV.F. of this preamble) and finalizing an emissions limit for PM of 4.9 mg/dscm and an opacity limit of 5 percent from process fugitive emissions sources that includes emissions from pot furnaces, as well as other combined process fugitive emissions (*e.g.,* emissions from furnace charging and tapping and casting).

3. BSER and PM Emissions and Opacity Standards Comments and Responses

a. BSER Determination

Comment: One commenter disagreed with the EPA's determination in the proposal preamble (87 FR 73715) that the BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces is an afterburner followed by efficient PM controls (*e.g.,* fabric filter installed in series with a high-efficiency particulate air (HEPA) filter and/or a venturi scrubber). The commenter noted that secondary lead smelting facilities use afterburners primarily to reduce emissions of carbon monoxide and unburned hydrocarbons from certain types of furnaces and configurations (*e.g.,* blast furnaces, collocated reverberatory furnaces) and that afterburners have little if any role in reducing emissions of PM.

Response: The EPA disagrees with the commenter's assertion that BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces should not include an afterburner. The afterburner helps to prevent fouling of the fabric filter by organics and moisture in the furnace exhaust, which results in better PM control. This determination is consistent with the BSER discussed in previous Secondary Lead Smelting NSPS review documents. For example, Volume 1 of the NSPS background document (June 1973, Air Pollution Technical Data (APTD)-1352a) states that the blast furnace afterburner is used upstream of the baghouse to ''incinerate oily and sticky materials to avoid binding the fabric.'' Additionally, the March 1979 NSPS review document (EPA–450/3–79–015) states that, ''As previously noted, with blast furnaces an afterburner is employed to ensure complete combustion of such material [sparks and other burning material in furnace gas] before it enters the baghouse.'' The commenter did not provide any additional information to contradict this long-standing analysis of the benefits of using in blast furnaces an afterburner to further reduce PM emissions.

b. Opacity Emission Limits for NSPS Subpart La

Comment: One commenter contended that the EPA based the proposed standard of 0 percent opacity limit for blast, reverberatory, and pot furnaces on insufficient information and limited data. The commenter also said that the EPA did not evaluate opacity measurements across the affected sources and under different operating conditions (particularly SSM periods).

In response to the EPA's request in the proposal for comments regarding the available opacity data for blast, reverberatory, and pot furnaces, the commenter provided a subset of opacity data measured in a common stack utilizing a continuous opacity monitor system (COMS) at the outlet of the baghouses before the scrubber (the commenter asserted a claim of CBI over the baghouse data). The commenter stated that the baghouse data demonstrate the presence of non-zero opacities during normal operations and contradict the EPA's proposed opacity limitation of 0 percent.

The commenter stated that the inherent subjectivity in the measurement of opacity precludes the EPA from establishing an absolute 0 percent opacity emissions standard. The commenter noted that the subjectivity of opacity measurements is acknowledged in the certification requirements for both EPA Method 9 and ASTM D7520–16 (*i.e.,* >15 percent opacity at any single plume reading or a >7.5 percent opacity average error in each plume category). The commenter added that ASTM D7520–16 references a repeatability (precision) study at 0 percent opacity of ±3 percent opacity (*i.e.,* at 0 percent opacity, ASTM D7520–16 will read between 0 percent opacity to 3 percent opacity 95 percent of the time), which could result in an exceedance of the 0 percent opacity standard. The commenter also noted that the proposed methodologies to determine opacity or visible emissions can be impacted by limitations in contrasting backgrounds and by the presence of wet plumes, which vary from source to source.

To account for the subjectivity and the margin of error associated with the proposed compliance test methods presented above, the commenter stated that the EPA should revise the proposed opacity limit to 5 percent.

Response: The EPA acknowledges that, on occasion during process operations and particularly during startup and shutdown events, brief periods of visible emissions from these sources are possible. However, since these sources are located in negative pressure locations, these periods of visible emissions should not typically occur. As such, to account for the remote possibility of these periods of visible emissions, limited data availability, and the subjectivity and margin of error of the visible emissions test methods, we are finalizing a visible emission standard of no greater than 5 percent over a single 6-minute averaging period. The 5 percent value ''threshold'' is the lowest visible emission increment reading achievable by EPA Method 9 that is greater than 0 percent, and the 6-minute averaging period represents the minimum number of visible emissions observations prescribed by EPA Method 9 to calculate a valid visible emissions average (*i.e.,* a minimum of 24 visible emissions observations shall be made at 15-second intervals). This opacity standard and averaging period accounts for brief periods of visible emissions while still maintaining stringency with the expected absence of emissions in a negative pressure environment.

To verify this, a 6-minute EPA Method 22 visible emissions check should occur at a minimum of once per calendar day during normal operations, as well as during each SSM event. If any visible emissions are observed for any period of time (*i.e.,* >0 seconds), a 30-minute EPA Method 9 visible emissions test must be conducted as soon as practicable. As an alternative, a 30-minute EPA Method 9 visible emissions test can be performed at a minimum of once per calendar day during normal operations, as well as during each SSM event without having to perform the EPA Method 22 visible emissions check. If any rolling 6-minute averaging period from the 30-minute visible emissions test is greater than 5 percent, corrective action must be initiated within 1 hour of detecting visible emissions above the applicable limit. After the corrective action is completed, an additional 30-minute visible emissions test must be performed. After the corrective action is completed, if any rolling 6-minute averaging period from the follow-up 30-minute visible emissions test is greater than 5 percent, the source is deemed out of compliance with the prescribed opacity standard.

Comment: One commenter noted an apparent typographical error in the proposed NSPS subpart La (40 CFR 60.122a) and suggested that the EPA change the text from ''Exhibit 0 percent opacity or greater'' to ''Exhibit opacity greater than'' the limit.

Response: The EPA has revised the text in NSPS subpart La 40 CFR

60.122a(a)(2) and 60.122a(b)(2) to address the typographical error.

c. PM Emissions Limit for Pot Furnaces

Comment: One commenter stated that the proposed rule's treatment of ''pot furnaces,'' including the establishment of PM standards for new pot furnaces, is misaligned with the functioning of pot furnaces at secondary lead smelters and with their treatment under other regulatory provisions, including NESHAP subpart X. The commenter said that NESHAP subpart X regulates pot furnace emissions as process fugitives, which are typically combined with emissions from other sources for ducting to controls, and that isolating pot furnace emissions for the purpose of performance testing may not be practical. The commenter said that the EPA should remove the proposed PM standard for pot furnaces.

The commenter stated that NESHAP subpart X (40 CFR 63.542) considers pot furnaces to be a process fugitive emissions source, rather than a process emissions source. The commenter noted that facilities may mix emissions from pot furnaces with process emissions from the smelting furnaces which makes it more difficult to segregate pot furnace emissions for compliance determination purposes. If the EPA does establish NSPS subpart La emission standards for new pot furnaces at secondary lead smelters, the commenter asserted that the EPA should clarify that commingled emissions from smelting furnaces and pot furnaces are subject to the proposed emission standards in 40 CFR 60.122a(a).

The commenter contended that the data the EPA used to establish the proposed PM emissions limit for pot furnaces are insufficient because the data include contributions from emission sources other than pot furnaces (*e.g.,* casting emissions).

The commenter also stated that the EPA should confirm that smaller refining kettles used for research and development (R&D) are excluded from the proposed definition of pot furnaces. For example, the EPA could exclude such kettles by establishing a size limit (*e.g.,* smaller than 5 tons of molten metal at maximum capacity) and a usage limit (operated fewer than 4000 hours per year). The commenter noted that the R&D refining kettles are a fraction of the size of normal production refining kettles (*e.g.,* 1 ton v. 100 tons) and are, therefore, insignificant emission sources at smelters.

Response: The EPA disagrees with commenter's statement that the final rule should not include a PM standard for pot furnaces. As noted in sections IV.A.1. and 2. of this preamble, the EPA has determined that the final BSER for PM emissions and opacity from new, modified, or reconstructed pot furnaces is efficient particulate controls, and the commenter does not dispute that PM emissions from pot furnaces can be reduced by application of these controls. Consequently, the EPA must establish a PM emissions limit that reflects BSER. However, the EPA acknowledges that isolating pot furnace emissions for NSPS compliance testing may not be feasible for all secondary lead smelting facilities. The EPA also acknowledges that the limited data the EPA used to establish the proposed PM emissions limit for pot furnaces include contributions from emission sources other than pot furnaces (*i.e.,* data from 5 of 6 test reports used to calculate the proposed pot furnace limit included contributions from casting fugitives).

To address the commenter's concern related to isolating emissions for compliance testing and the limited data set, the EPA conducted a further evaluation of the available test data to identify data values that included contributions from pot furnaces combined with other process fugitive sources (*e.g.,* emissions from furnace charging and tapping and casting). The EPA used this data set of comingled pot furnace emissions, which consists of 45 test runs from 3 facilities (Clarios, South Carolina; Gopher Resource, Florida; and Gopher Resource, Minnesota), to derive a PM emissions limit for pot furnace emissions combined with emissions from other process fugitives. Based on this updated analysis, in the final NSPS subpart La (40 CFR 60.122a(a)), the EPA is promulgating a process fugitive source emissions limit for PM of 4.9 mg/dscm from the process emissions control devices. This analysis can be found in the Particulate Matter Emissions Test Data Memorandum for Process Fugitive Sources as Secondary Lead Smelting Facilities located in the docket for this rulemaking. This approach of regulating pot furnace emissions as a process fugitive source is consistent with the approach used under NESHAP subpart X, which requires that new or reconstructed sources must capture all process fugitive emissions (including pot furnace emissions) with hoods or negative pressure enclosures and route those emissions to a control device.

Regarding the commenter's assertion that the EPA should confirm that smaller refining kettles used for R&D are excluded from the proposed definition of pot furnaces, the commentor did not provide any data demonstrating that R&D kettles cannot meet the proposed requirement. Additionally, the EPA is not finalizing the proposed definition for pot furnaces and is finalizing a process fugitive emissions limit. Therefore, the EPA has no basis to provide an exception to the emissions limits specified in NSPS subpart La at this time. However, the EPA may revisit this issue under the NESHAP subpart X review.

B. NSPS Subpart La Without Startup, Shutdown, and Malfunction Exemptions

Consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the EPA has established standards in NSPS subpart La that apply at all times. We are finalizing in NSPS subpart La specific requirements at 40 CFR 60.122a(c) that override the general provisions for SSM requirements. In finalizing the standards in NSPS subpart La, the EPA has taken into account startup and shutdown periods and, for the reasons explained in this section of the preamble, has not finalized alternate standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in CAA section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting ''achievable'' standards under CAA section 112) has been upheld as reasonable by the D.C. Circuit in *U.S.*

Sugar Corp. v. *EPA,* 830 F.3d 579, 606–610 (2016).

1. Proposed SSM Provisions

The EPA proposed in NSPS subpart La that the PM emissions and opacity limits for blast, reverberatory, and pot furnaces apply at all times, including periods of SSM. The proposed NSPS subpart La included specific requirements at 40 CFR 60.122a(c) that would override the general provisions for SSM requirements.

2. How the Final Revisions to the SSM Provisions Differ From the Proposed Revisions

After considering the comment on the proposed SSM provisions, the EPA is finalizing in NSPS subpart La that the PM emissions and opacity limits for blast, reverberatory, and pot furnaces apply at all times, including periods of SSM, and is finalizing the SSM provision in 40 CFR 60.122a(c), as proposed.

3. SSM Provision Comment and Response

Comment: One commenter asserted that the EPA should not remove from NSPS subpart La the exception in the NSPS general provisions (40 CFR 60.8(c)) which states that emissions during SSM periods that exceed the applicable NSPS limit are not considered to be a violation of the applicable emission limit. The commenter noted that multiple rulings by the D.C. Circuit (*e.g., Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 398 (D.C. Cir. 1973); *Essex Chem. Corp.* v. *Ruckelshaus,* 486 F.2d 427, 432 (D.C. Cir. 1973); and *National Lime Ass'n* v. *EPA,* 627 F.2d 416, 431 n.46 (D.C. Cir. 1980)) have affirmed the EPA's historic approach of not requiring affected sources to meet NSPS emission limits during SSM events. The commenter stated that it would be arbitrary and capricious for the EPA to interpret *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), as preventing the EPA from exercising discretion in establishing an SSM exception in NSPS subpart La or as making an SSM exception inappropriate in NSPS subpart La on the current record.

Response: As discussed in more detail in the proposal, the EPA has determined that the reasoning in the court's decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), which vacated the SSM exemption in CAA section 112, applies equally to CAA section 111. Therefore, we disagree with the commenter on the applicability of this decision to CAA section 111. While the EPA recognizes the differences between the NESHAP and NSPS programs, the court in *Sierra Club* held that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature, and the definition of emission or standard in CAA section 302(k) and the requirement for continuous standards applies to both NESHAP and NSPS.

C. Testing and Monitoring Requirements

1. Proposed Testing and Monitoring Provisions

The EPA proposed requiring that facilities subject to 40 CFR part 60, subparts L and La conduct periodic PM testing of blast, reverberatory, and pot furnace emissions. The EPA also proposed under 40 CFR part 60, subpart La periodic testing of opacity from blast, reverberatory, and pot furnace emissions. The proposed amendments would allow facilities to request less frequent periodic PM testing, reduced from every 12 months to every 24 months, if the previous periodic compliance test demonstrates that PM emissions are 50 percent or less of the final emissions limit (*e.g.,* PM emissions from blast and reverberatory furnaces of 25 mg/dscm or less for facilities subject to 40 CFR part 60, subpart L).

To reduce the testing burden on facilities, the EPA also proposed allowing facilities to determine the PM emissions by either EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Determination of Metals Emissions from Stationary Sources). For determining opacity under NSPS subpart L, the EPA proposed allowing the use of ASTM, International (ASTM) D7520–16 (Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere) as an alternative to EPA Method 9. For NSPS subpart La, the EPA proposed allowing the use of EPA Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) if there are zero visible emissions as an alternative to EPA Method 9 or the ASTM D7520–16 method.

The EPA also proposed adding 40 CFR 60.124 and 40 CFR 60.124a (Monitoring requirements) to NSPS subparts L and La, respectively, to include some of the monitoring requirements specified in 40 CFR 63.548(a) through (i) (Monitoring requirements) of the NESHAP (40 CFR part 63, subpart X), including development of a standard operating procedures (SOP) manual for control devices used to reduce PM and opacity emissions.

2. How the Final Revisions to the Testing and Monitoring Provisions Differ From the Proposed Revisions

After considering the comments, the EPA is finalizing the testing and monitoring provisions, as proposed. In response to public comment regarding the appropriate level of the opacity standard, the EPA revised the proposed opacity standard from 0 percent to 5 percent (see the discussion in section IV.A. of this preamble). Although EPA Method 22 is used only to determine the absence of visual emissions (*i.e.,* zero percent opacity), rather than to determine non-zero readings (*e.g.,* 5 percent opacity), the EPA is retaining the use of EPA Method 22 as an alternative method to potentially reduce the testing burden on facilities. For example, a facility could use EPA Method 22 to demonstrate compliance with the final opacity limit of 5 percent by determining no visible emissions. However, if visible emissions are detected, the facility would need to proceed to use EPA Method 9 to confirm opacity is no more than 5 percent.

3. Testing and Monitoring Comments and Responses

Comment: One commenter contended that periodic PM testing is unnecessary and inappropriate, and would not discover any actionable information that would not be discovered through the regular performance testing for particulate lead required by NESHAP subpart X.

Response: The EPA disagrees with the commenter. The target pollutant of the periodic testing under NESHAP subpart X is lead, while the target pollutant for the NSPS is PM. The EPA concludes that it is appropriate to require periodic testing for PM to confirm affected facilities continue to comply with the PM limits. Codifying the testing requirements in the NSPS provides for periodic, direct assessments regarding facility compliance status with the PM limits in NSPS subparts L and La.

Comment: One commenter acknowledged that allowing facilities to conduct performance tests for NESHAP subpart X and NSPS subparts L and La, as applicable, through collection of a single sample will appropriately facilitate effective compliance. The commenter stated that, to assist in the clarity of implementing the proposed rule, the EPA should revise proposed 40 CFR 60.123 and 60.123a to clarify that smelters are to employ section 16.1 of EPA Method 12 or the specifications in EPA Method 29, as stated in section 1.2

of EPA Method 29, and detailed throughout EPA Method 29.

Response: The EPA added the test method sections cited by the commenter to the final rules.

Comment: One commenter noted that proposed NSPS subparts L and La (at 40 CFR 60.123(b)(2) and 60.123a(b)(2)) allow for facilities to request from the EPA Administrator an extension (up to 24 months) for conducting the periodic performance tests for facilities where the previous compliance tests measured PM emissions are 50 percent or less of the emissions limit (*e.g.,* for NSPS subpart L, 25 mg/dscm or less). The commenter asserted that, in practice, it is difficult for well-controlled smelters to obtain a timely decision from the EPA regarding the facility's request, which is essentially tantamount to an unjustified denial of the extension request. The commenter stated that the EPA should provide the testing extension upon receipt of the facility's request by the appropriate EPA regional office, rather than the facility having to wait for Administrator approval.

Response: The EPA disagrees with the commenter. Providing the performance testing extension based solely on the receipt of the facility's request would not be appropriate because it would not provide any opportunity for the EPA or delegated authority to verify the facility's assertion by reviewing the request and supporting documentation (*e.g.,* test report) before granting the testing extension. However, the EPA recognizes it is reasonable for a facility to expect to get a response as to whether the 24-month period is approved within a reasonable timeframe before their next compliance test. Therefore, the EPA has determined that it is appropriate to finalize a provision that would preserve the opportunity to review incoming requests, while encouraging the EPA or delegated authority to act within a reasonable timeframe so that facilities have adequate notice as to when the next compliance test will be required. Accordingly, the EPA is finalizing a provision that provides that the extension request will be deemed automatically approved under the following specified circumstances: (1) a facility completes a performance test that is 50 percent or lower than the applicable emissions limit, (2) the facility submits a request for the extension of 24 months well before their next required compliance test (*i.e.,* no more than 4 months after the subject compliance test that was 50 percent or lower than the limit), and (3) the EPA does not provide a response to such request within 6 months of receipt of such request. The EPA has determined that this provision will provide a balanced approach to the competing interests of all involved parties.

D. Electronic Reporting

The EPA is finalizing a requirement that owners and operators of secondary lead smelters subject to the NSPS subparts L and La submit the results of the initial and periodic performance tests electronically through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA did not receive any public comments regarding the proposed requirements for electronic reporting.

E. Notification, Recordkeeping, and Reporting Requirements

1. Proposed Notification, Recordkeeping, and Reporting Provisions

The EPA proposed to add the notification, recordkeeping, and reporting requirements specified in the proposed 40 CFR 60.125 and 40 CFR 60.125a (Notification, recordkeeping, and reporting requirements) to NSPS subparts L and La, respectively. The proposed requirements clarified that facilities must comply with the notification and recordkeeping requirements specified in 40 CFR 60.7 and the reporting requirements specified in 40 CFR 60.19. The proposed requirements in NSPS subparts L and La included the recordkeeping requirements from NESHAP subpart X specified in 40 CFR 63.550(b); (c)(1) through (c)(4); (c)(11) through (c)(12); (e)(4) through (e)(7); and (e)(13).

2. How the Final Revisions to the Notification, Recordkeeping and Reporting Provisions Differ From the Proposed Revisions

After considering the comments, the EPA is finalizing the notification, recordkeeping and reporting provisions, as proposed, with the exception of the editorial changes made to the text of 40 CFR 60.125(a) and 60.125a(a); 40 CFR 60.124(c) and 60.124a(c); and 40 CFR 60.124(f)(4) and 60.124a(f)(4), as discussed below in section IV.E.3. of this preamble.

3. Notification, Recordkeeping, and Reporting Comments and Responses

Comment: One commenter stated that the EPA should clarify as to the proposed revisions to NSPS subpart L that certain aspects of the NSPS General Provisions 40 CFR 60.7 and 60.19 will not apply because they concern regulatory provisions that are absent from NSPS subpart L (*e.g.,* 40 CFR 60.7(a)(7) concerns continuous opacity monitoring systems, which appropriately are not required under proposed NSPS subpart L).

Response: The EPA revised the text of 40 CFR 60.125(a) and 60.125a(a) as set forth in the amendatory text portion of this final rule to address the clarification suggested by the commenter.

Comment: One commenter stated that the EPA should revise the proposed NSPS subparts L and La (40 CFR 60.124(c) and 60.124a(c)) to replace the phrase ''PM and opacity emissions control devices'' with the phrase ''baghouses (fabric filters or cartridge collectors)'' to improve the consistency between the underlying requirement proposed in 40 CFR 60.124(b) and 60.124a(b), and the submission provisions proposed in 40 CFR 60.124(c) and 60.124a(c).

Response: The EPA agrees with the editorial change suggested by the commenter. Therefore, the final NSPS subparts L and La (40 CFR 60.124(c) and 60.124a(c)) replace the phrase ''PM and opacity emissions control devices'' with the phrase ''baghouses (fabric filters or cartridge collectors).''

Comment: One commenter requested that the EPA provide a mechanism by which a secondary lead smelting facility could avoid submission of a redundant SOP manual in response to the proposed requirements in 40 CFR 60.124 and 60.124a, given the similarities between those provisions and the SOP required by NESHAP subpart X (40 CFR 63.548).

Response: The EPA disagrees with the commenter that an additional mechanism is needed that would allow secondary lead smelting facilities to avoid submission of redundant SOP manuals in response to the proposed requirements in 40 CFR 60.124 and 60.124a. Proposed 40 CFR 60.124(l) and 60.124a(l) state: ''If an affected source is subject to the monitoring requirements specified in 40 CFR part 63, subpart X (National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting) and those requirements are as stringent or more stringent than the monitoring requirements specified in paragraphs (a) through (j) of this section, compliance with the monitoring requirements specified in 40 CFR part 63, subpart X also demonstrates compliance with the monitoring requirements specified in paragraphs (a) through (k) of this section.'' The EPA believes that this specification in NSPS subparts L and La already addresses the concern raised by the commenter.

Comment: One commenter noted that proposed NSPS subparts L and La (40

CFR 60.124(f)(4) and 60.124a(f)(4)) refer to the document ''Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015; September 1997). The commenter stated that the EPA guidance document is 26 years old and may be inconsistent with current guidance provided by manufacturers of bag leak detection systems. The commenter requested that the EPA revise proposed NSPS subparts L and La (40 CFR 60.124(f)(4) and 60.124a(f)(4)) to clarify that a smelter may install and operate the bag leak detection system in a manner consistent with the manufacturer's written specifications and recommendations if there is any conflict between the manufacturer's instructions and the OAQPS guidance.

Response: The EPA agrees with the clarification suggested by the commenter. Therefore, the final text of 40 CFR 60.124(f)(4) and 60.124a(f)(4) as set forth in the amendatory text portion of this final rule.

Comment: One commenter contended that the proposed requirements in NSPS subparts L and La (40 CFR 60.124(k), 60.124a(k), 60.125(c)(10), and 60.125a(c)(10)) for facilities to establish and record parametric monitoring values for each control device used to comply with the PM and opacity emission standards are not consistent with the requirements of NESHAP subpart X (40 CFR 63.550(a)), which only requires parametric monitoring and recordkeeping for scrubbers. The commenter stated that the proposed requirements in NSPS subparts L and La (40 CFR 60.124(k) and 60.124a(k)) for secondary lead smelting facilities to establish, during the initial or periodic performance test, the value or range of values of the monitoring parameter(s) for each control device used to comply with the PM and opacity emission standards was overly vague and potentially would require the establishment of monitoring parameters for pollution control devices (*e.g.,* WESPs) that are employed, but are not part of BSER, or afterburners that are employed, but have little or no role in PM control. The commenter added that the proposed NSPS subparts L and La include monitoring and recordkeeping provisions that provide sufficient criteria for the proper operation of applicable control devices (the commenter provided several citations to the proposed rules). The commenter stated that the EPA should revise the proposed language to specify that a secondary lead smelting facility is not required to establish and record parametric monitoring values for PM control devices (other than scrubbers) if the facility demonstrates compliance with NSPS subparts L and/or La (40 CFR 60.124 and/or 60.124a) by complying with the monitoring provisions of NESHAP subpart X.

Response: Although the EPA strives to improve the consistency between NSPS subparts L and La and NESHAP subpart X, where possible, the EPA's decision-making regarding the requirements for the NSPS must be driven by the requirements of CAA section 111 and the regulatory provisions necessary to implement standards of performance promulgated pursuant to that authority. We have determined that parametric monitoring of control devices is necessary for demonstrating ongoing compliance with the PM and opacity emission standards between the demonstrations provided by the periodic performance tests. We also disagree with the commenter that the text in proposed NSPS subparts L and La (40 CFR 60.124(k) and 60.124a(k)) is overly vague. The rules specify establishment of monitoring parameter values ''for each control device used to comply with the PM and opacity emission standards'' of the NSPS. Regarding the commenter's contention that the proposed text could potentially require the establishment of monitoring parameters for control devices (*e.g.,* WESP) and afterburners, this is consistent with the EPA's intent. The EPA determined that BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces is an afterburner followed by efficient PM controls, which would include controls such as a WESP.

Comment: One commenter said that the phrase ''and those requirements are as stringent or more stringent than the monitoring requirements specified in paragraphs (a) through (j) of this section'' in proposed NSPS subparts L and La (40 CFR 60.124(l) and 60.124a(l)) introduces regulatory confusion as to whether compliance with the monitoring provisions of NESHAP subpart X also demonstrates compliance with the proposed monitoring requirements of NSPS subparts L and La. The commenter asserted that the EPA should either eliminate the phrase from the regulatory text or, at a minimum, state in the preamble to the final NSPS rulemaking that the current monitoring provisions of NESHAP subpart X are as stringent or more stringent than the monitoring requirements specified in the proposed NSPS.

Response: The EPA believes that the current monitoring provisions of NESHAP subpart X are at least as stringent as the monitoring requirements specified in the final NSPS subparts L and La. Nonetheless, the EPA continues to find it appropriate to finalize the proposed language at 40 CFR 60.124(l) and 60.124a(l) with respect to the NESHAP subpart X monitoring requirements. NESHAP undergo periodic reviews pursuant to CAA section 112, and, to the extent that NESHAP subpart X were revised during a future review, or otherwise modified, such that the monitoring requirements were no longer as stringent or more stringent than those finalized in subparts L and La, it would no longer be appropriate to permit the use of the monitoring requirements in NESHAP subpart X in lieu of those required by the NSPS.

Comment: One commenter said that proposed NSPS subparts L and La (40 CFR 60.124 and 60.124a) require that the monitoring systems comply with the applicable requirements specified in the NSPS General Provisions (40 CFR 60.13) but noted that 40 CFR 60.13(a) states that the section is only applicable ''upon promulgation of performance specifications for continuous monitoring systems under appendix B to this part.'' The commenter contended that, because proposed NSPS subparts L and La do not require continuous monitoring systems to demonstrate compliance with emission limits, the EPA should revise the proposed language in 40 CFR 60.124 and 60.124a to include the following text: ''The owner shall comply with the applicable monitoring requirements specified in 40 CFR 60.13 upon promulgation of performance specifications in 40 CFR part 60—Appendix B for the continuous monitoring systems required in this section. The Procedures of 40 CFR part 60—Appendix F do not apply because the continuous monitoring systems required in this section are not used to demonstrate compliance with emission limits on a continuous basis.''

Response: The EPA disagrees with the commenter that additional text is needed in 40 CFR 60.124 or 60.124a. As the commenter noted, 40 CFR 60.124 and 60.124a state that the owner shall comply with the *applicable* monitoring requirements specified in 40 CFR 60.13. Although the proposed NSPS subparts L and La do not require facilities to use continuous opacity monitoring systems (COMS) or continuous emissions monitoring systems (CEMS) to comply with the standards, NSPS subparts L and La do not preclude facilities from using COMS or CEMS. The performance standards are required if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis.

F. Definitions

1. Proposed Definitions

The EPA proposed to incorporate the definitions shown in Table 1 of this preamble into 40 CFR 60.121 (Definitions) of existing 40 CFR part 60, subpart L and 40 CFR 60.121a (Definitions) of the proposed 40 CFR part 60, subpart La. These proposed definitions were intended to improve the clarity of the NSPS subparts and to reduce potential confusion among industry and regulatory agencies by aligning the descriptions of the affected sources that would be regulated by 40 CFR part 60, subparts L and La to be more consistent with the definitions within the NESHAP at 40 CFR part 63, subpart X, as shown in Table 1. These proposed changes did not affect the applicability of existing NSPS subpart L.

TABLE 1—PART 60 PROCESS EQUIPMENT DEFINITIONS PROPOSED FOR NSPS SUBPARTS L AND La

Equipment	Current definition in NSPS subpart L	NESHAP subpart X	Proposed for NSPS subparts L and La
Blast furnace	Any furnace used to recover metal from slag.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that lead compounds are chemically reduced to elemental lead metal.
Reverberatory furnace	Includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap such that lead compounds are chemically reduced to elemental lead metal. Reverberatory furnaces include the following types: stationary, rotating, rocking, and tilting.
Pot furnace	Not defined	Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.	Pot furnace is a type of refining kettle, which is an open-top vessel constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead.

2. How the Final Rule Definitions Differ From the Proposed Definitions

After considering the comments on the proposed definitions, the EPA is not adopting the proposed changes to the definitions for blast furnace, reverberatory furnace, and pot furnace in current NSPS subpart L. For NSPS subpart La, the EPA is maintaining in 40 CFR 60.121a (Definitions) the definitions of ''blast furnace,'' ''lead,'' ''reverberatory furnace,'' and ''secondary lead smelter'' specified in current NSPS subpart L (instead of adopting the proposed definitions in Table 1, above) and finalizing the definition of ''process fugitive emissions source.'' Table 2 of this preamble shows the final process definitions for NSPS subpart La.

TABLE 2—PART 60 FINAL DEFINITIONS FOR NSPS SUBPART LA

Equipment	Final NSPS subpart La
Blast furnace	Blast furnace means any furnace used to recover metal from slag.
Lead	Lead means elemental lead or alloys in which the predominant component is lead.
Reverberatory furnace	Reverberatory furnace includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.
Process fugitive emissions source	A source of PM emissions at a secondary lead smelter that is associated with lead smelting or refining including, but not limited to, smelting furnace charging points; smelting furnace lead and slag taps; pot and refining furnaces; and casting kettles.

3. Definition Comments and Responses

Comment: One commenter provided several comments and recommendations regarding the proposed definitions in NSPS subparts L and La. The commenter said that the EPA should revise the proposed definition of ''secondary lead smelter'' to use the term ''lead-bearing material'' rather than ''lead-bearing scrap material'' and either include or cross-reference the definition of ''lead bearing material'' from NESHAP subpart X (40 CFR 63.542). The commenter noted that the proposed definitions in NSPS subparts L and La did not define either ''lead-bearing material'' or ''lead-bearing scrap material.'' The commenter said that the EPA should clarify that these terms in the proposed definitions of ''blast furnace'' and ''reverberatory

furnace'' (40 CFR 60.121(a) and 60.121a(a)), mean the same as ''lead-bearing material'' as defined in NESHAP subpart X (40 CFR 63.542).

The commenter stated that the EPA should align the proposed definition of ''blast furnace'' in 40 CFR 60.121(d) and 60.121a(d) with the NESHAP definition for ''blast furnace'' used in NESHAP subpart X (40 CFR 63.542) by including the phrases ''uses coke as a fuel source'' and ''(greater than 980 Celsius)'' to eliminate potential confusion about applicability and the possibility of any gaps between the NESHAP and NSPS definitions. The commenter said that the EPA should align the proposed definition of ''reverberatory furnace'' in NSPS subparts L and La (40 CFR 60.121(a) and 60.121a(a)) with the NESHAP subpart X definition by excluding the last sentence of the proposed definition to eliminate potential confusion about applicability and the possibility of any gaps between the NESHAP and NSPS definitions: ''Reverberatory furnaces include the following types: stationary, rotating, rocking, and tilting furnaces.''

The commenter said that the proposed definitions for ''lead'' in NSPS subparts L and La (40 CFR 60.121(c) and 60.121a(c)) should include the term ''lead alloy,'' rather than ''alloy,'' because ''alloy'' arguably could refer to certain unspecified non-lead alloys. The commenter stated that the EPA should change the term ''alloy'' to ''lead alloy'' and add the definition of ''lead alloy'' from NESHAP subpart X (40 CFR 63.542) to NSPS subparts L and La.

The commenter also noted that the proposed NSPS subparts L and La did not define the term ''smelting'' used in the proposed secondary lead smelter definition and said that the EPA should either include or cross-reference the definition of ''smelting'' from NESHAP subpart X (40 CFR 63.542).

The commenter asserted that the EPA should clarify that, for a refining kettle that meets the pot furnace definition, the new pot furnace includes all of the typical refining kettle components including (as applicable): footers, structural steel, kettle or pot (constructed of cast iron or steel), indirect heating system (burners, piping, monitors, combustion air system, and flue), cover, fume collection system (hood), agitator (mixer, motor, drive, and mount), furnace shell, refractory lining, lead pump, electrical components (switches, controllers, etc.), and process monitors. The commenter noted that this clarification is important because facilities regularly replace both the kettle and the refractory lining component of the pot furnace during the pot furnace's useful life and replacing the kettle or the refractory lining of a pot furnace potentially could be misinterpreted as reconstruction without appropriate clarification on this issue.

The commenter also stated that the EPA should revise the definition of ''pot furnace'' at proposed 40 CFR 60.121(e) and 60.121a(e) as follows to clarify that the definition does not apply to receiving kettles, holding kettles, or R&D kettles: ''(e) Pot furnace means a type of refining kettle, which is an open-top vessel constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. For avoidance of doubt, the term ''pot furnace'' excludes the following types of refining kettles: (i) receiving kettles and holding kettles where refining or alloying activities do not occur; and (ii) pot furnaces with a maximum capacity less than 5 tons molten metal that are operated fewer than 4000 hours per year.''

The commenter noted that the important distinction between pot furnaces used for refining and alloying, on the one hand, and refining kettles used for receiving or holding molten lead, on the other hand, is not present in the proposed rule. Instead, the commenter said that the EPA proposed a definition of pot furnaces in 40 CFR 60.120(e) and 60.120a(e) as ''a type of refining kettle, which is an open-top vessel constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead.''

Response: These proposed definitions were intended to improve the clarity of the NSPS subparts and to reduce potential confusion among industry and regulatory agencies by aligning the descriptions of the affected sources that would be regulated by NSPS subparts L and La to be more consistent with the definitions within the NESHAP subpart X. However, after considering the comments received regarding the proposed process equipment definitions and because of potential future changes to the definitions in NESHAP subpart X pursuant to the EPA's upcoming review of NESHAP subpart X, which applies to new and existing sources, the EPA is not finalizing the proposed process equipment definition changes in subpart L and La. The EPA had determined that it is more appropriate to complete the NESHAP review first before finalizing any changes to the existing definitions in NSPS subparts L and La for blast furnace, lead, reverberatory furnace, and secondary lead.

As part of the NESHAP review process, the EPA will acquire new information regarding secondary lead process equipment, which could result in revisions to the existing NESHAP definitions or development of new definitions. Were the EPA to finalize the proposed definitions in NSPS subparts L and La at this time, such future revisions to the definitions in NESHAP subpart X may create new inconsistencies. In this case, finalizing the proposed definitions to NSPS subparts L and La would not increase clarity and consistency as intended. Instead, any definition changes made in NSPS subparts L and La at this time with the intent of improving the consistency between the NSPS and NESHAP definitions would be mistimed, and the EPA might need to consider further revising the NSPS definitions established in this action in the future to reflect the equipment definitions specified in the post-review NESHAP. Because the EPA has decided not to finalize the revised definitions, the EPA does not need to provide detailed responses to the comments suggesting specific revisions to those definitions.

In addition, after revisiting the process definitions that have been in NSPS subpart L since 1983, we find that no changes are needed to improve clarity as initially thought at proposal. Therefore, we are not finalizing any changes to the existing definitions in NSPS subpart L or in NSPS subpart La. Instead, we are maintaining the blast furnace, lead, reverberatory furnace, and secondary lead smelter definitions currently specified in NSPS subpart L. However, we are adding to NSPS subpart La a definition for ''process fugitive emissions source'' to accommodate the final PM standard for pot furnaces (see the discussion in section IV.A.2. of this preamble). Also, regarding the comments that the EPA should include the term ''lead alloy,'' rather than ''alloy,'' the current subpart L and new subpart La both state that ''*Lead* means elemental lead or alloys in which the predominant component is lead.'' This definition is clear that the only alloys affected by the rule are alloys in which the predominant component is lead. The term ''alloys in which the predominant component is lead'' essentially means the same thing as ''lead alloys''. Therefore, we did not make any changes to the definition of lead or add a new definition for lead alloys to subparts L or La.

With regard to the comment that the EPA should include a definition of smelting or provide a cross reference, because of potential future changes to

the definitions in NESHAP subpart X (including for ''smelting'') pursuant the EPA's upcoming review of NESHAP subpart X (discussed above), which applies to new and existing sources, the EPA decided not to add a new definition for smelting in subpart L or La at this time because of potential inconsistencies once the EPA completes the next NESHAP review.

Regarding the comment that EPA should revise the definition of ''pot furnace'', this may have been an important clarification for the NSPS final rule if the EPA finalized the proposed pot furnace specific emissions limit of 3 mg/dscm. However, as explained in a previous response, instead of a pot furnace specific limit, the EPA is promulgating a PM limit of 4.9 mg/dscm for process fugitive emissions, which includes pot furnaces, but also includes other process fugitive emissions sources (such as refining kettles, holding kettles, alloying units). Therefore, we conclude that the specific definition clarifications requested by the commenter are no longer necessary for implementation of the NSPS and can wait until the EPA completes the next NESHAP review.

G. Effective Date and Compliance Dates

Pursuant to CAA section 111(b)(1)(B), the effective date of the final rule requirements in NSPS subpart La and amendments to NSPS subpart L will be the promulgation date, which is the date of publication of the final rule in the **Federal Register**. Affected sources that commence construction, reconstruction, or modification after December 1, 2022, must comply with all requirements of NSPS subpart La no later than the effective date of the final rule or upon startup, whichever is later.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the air quality impacts?

The final amendments to 40 CFR part 60, subpart La:

- Reduce the PM emissions limit for blast and reverberatory furnaces from 50 to 10 mg/dscm.
- Establish new PM emissions limits for process fugitive emissions sources of 4.9 mg/dscm.
- Lower the opacity limit for blast and reverberatory furnaces from 20 percent to 5 percent.
- Lower the opacity limit for pot furnaces from 10 percent to 5 percent.

New or reconstructed blast, reverberatory, and pot furnaces will also be subject to the NESHAP (40 CFR part 63, subpart X) requirements for new sources, while modified blast, reverberatory, and pot furnaces will also be subject to the NESHAP requirements for existing sources. NESHAP subpart X regulates particulate lead emissions from process vent, process fugitive, and fugitive dust sources. The emissions capture systems and control devices that are already required by the NESHAP to comply with the lead limits for blast furnaces, reverberatory furnaces, and process fugitive emissions sources will also control PM emissions regulated by the NSPS. Therefore, the final 40 CFR part 60, subpart La will not result in actual reductions of PM emissions. However, codifying the lower PM and opacity limits in the final 40 CFR part 60, subpart La will significantly reduce the PM and opacity allowable emissions of affected sources that commence construction, reconstruction, or modification after December 1, 2022.

B. What are the secondary impacts?

Indirect or secondary air emissions impacts result from the increased energy usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from electricity generating power plants). The EPA does not expect that facilities will need any additional control devices or other equipment to meet the final NSPS requirements beyond those that would already be needed to comply with the NESHAP. Therefore, the EPA does not attribute any secondary impacts to the final 40 CFR part 60, subpart La.

C. What are the cost impacts for regulated facilities?

For 40 CFR part 60, subparts L and La, the EPA requires that facilities conduct periodic performance tests to measure PM emissions using EPA Method 5 (Determination of Particulate Matter Emissions from Stationary Sources). The NESHAP (40 CFR part 63, subpart X) also requires periodic tests for lead using EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Metal Emissions from Stationary Sources). Because both of the NESHAP test methods analyze the PM captured on the internal surfaces of the sampling probe and on a sampling train filter to determine the lead concentration, facilities can conduct an additional gravimetric analysis of the EPA Method 12 or EPA Method 29 probe rinse and filter to determine PM emissions, rather than performing separate tests using EPA Method 5. The EPA estimates that the additional gravimetric analysis of the EPA Method 12 or EPA Method 29 particulate filter costs approximately $300 per test per year. To estimate the total cost associated with the final periodic PM performance tests under 40 CFR part 60, subparts L and La, the EPA assumed that each respondent under the respective subparts would conduct 3 p.m. tests per year (1 for each furnace type). See section V.C. of this preamble for more details on cost estimates.

For 40 CFR part 60, subpart La, the EPA is also requiring that facilities periodically determine the opacity of blast furnace, reverberatory furnace, and process fugitive source emissions. For NSPS subpart La, the EPA is requiring that facilities conduct initial and periodic tests using EPA Method 9 or ASTM D7520–16. Alternatively, facilities can use EPA Method 22 (Visible Determination of Fugitive Emissions) to determine no visible emissions from blast furnace, reverberatory furnace, and process fugitive emissions sources. To estimate the cost of the initial and periodic opacity tests for NSPS subpart La, the EPA assumed that new facilities would be able to determine no visible emissions using EPA Method 22, rather than using EPA Method 9. The EPA assumed that new facilities would train facility personnel to implement EPA Method 22 (at a one-time cost of $426 per facility), but not incur additional capital costs associated with conducting the EPA Method 9 observations.

We estimate that 2 of the 11 existing facilities will be modified or reconstructed over the next five years such that these 2 facilities will be subject to subpart La, and the other 9 facilities will be subject to subpart L. Therefore, for 40 CFR part 60, subpart L, the total incremental cost for the periodic PM testing over the 3-year period is $16,200 three tests per year at $300 per test for 9 respondents for years 2 and 3 (facilities subject to subpart L have already conducted initial performance tests for PM emissions and opacity). For 40 CFR part 60, subpart La, the total incremental cost for PM testing over the 3-year period is $8,100 (*i.e.,* three tests per year at $300 per test for the two existing facilities that the EPA assumes will undergo reconstruction and one new facility) and the total incremental cost for opacity testing is $426 for EPA Method 22 training (*i.e.,* $426 one-time cost for the new facility). Based on a review of facility operating permits, the two existing facilities that we determined could be reconstructed over the 3-year period (thereby triggering NSPS subpart La applicability) already conduct periodic opacity tests using EPA Method 9. Therefore, the EPA did not estimate opacity testing costs for the two potential reconstructed facilities. The

estimated total incremental cost for emissions testing for two reconstructed sources and one new source projected over the 3-year period is $8,526.

The EPA did not estimate cost impacts for the final monitoring requirements in 40 CFR part 60, subparts L and La because this action will allow subject facilities to comply with these subparts by complying with the applicable monitoring requirements for new sources specified in the NESHAP (40 CFR part 63, subpart X). Therefore, there is no additional monitoring burden.

D. What are the economic impacts?

The EPA conducted an economic impact analysis (EIA) and small business screening assessment for this final action, as discussed in the proposal for this action and detailed in the memorandum, *Economic Impact Analysis for Final Revisions and Amendments to the New Source Performance Standards for Secondary Lead Smelters,* which is available in the docket for this action. The economic impacts of this final action were estimated by comparing total annualized compliance costs to revenues at the ultimate parent company level. This is known as the cost-to-revenue or cost-to-sales test. This ratio provides a measure of the direct economic impact to ultimate parent company owners of facilities while presuming no impact on consumers.

As discussed in the proposal for this action, we estimate that the total cost for emissions testing, reporting, and recordkeeping projected over the 3-year period for the 9 sources subject to NSPS subpart L is $80,000. The average annual cost per facility is approximately $3,000. The 9 facilities subject to NSPS subpart L are owned by seven different parent companies with an annual average revenue of $4.5 billion in 2021. As discussed in section V.C. of this preamble, we assume the other 2 existing facilities will be modified or reconstructed and therefore will be subject to subpart La. The economic impact associated with this cost as an annual cost per sales, for the average parent company in the industry, is less than 0.0001 percent and is not expected to result in a significant market impact, regardless of whether it is fully passed on to the consumer or fully absorbed by the affected firms.

In addition, the cost analysis assumed that facilities subject to final 40 CFR part 60, subpart La would conduct initial and periodic tests for PM emissions and opacity, but would not need to install control devices to meet the final PM and opacity emissions limits because the new, modified, or reconstructed facility would install the same types of controls already necessary to comply with NESHAP subpart X. The EPA also assumed that facilities subject to the final NSPS subpart La would not incur monitoring costs attributed to the new NSPS.

The EPA views the testing costs to be upper-bound estimates on the potential compliance costs of the final 40 CFR part 60, subparts L and La. Even under the upper-bound cost assumptions described above, the EPA expects the potential economic impacts of this final action will be small.

As required by the Regulatory Flexibility Act (RFA), we performed an analysis to determine if any small entities might be disproportionately impacted by the final requirements. The EPA does not know with certainty which existing facilities may be reconstructed or modified in the future and subject to NSPS subpart La, and therefore cannot perform an accurate cost-to-sales analysis. However, based on an assessment of the projected growth in the secondary lead smelting industry, the EPA believes it is unlikely that any future facilities will be reconstructed or modified by a small business.

E. What are the benefits?

The final revisions to 40 CFR part 60, subparts L and La clarify both rules, improve the practical enforceability of the rules, and enhance compliance and enforcement. The EPA expects that implementing the final amendments to 40 CFR part 60, subparts L and La will help ensure that control systems used to reduce PM and opacity emissions from affected sources are properly operated and maintained over time.

Additionally, the final amendments to require electronic reporting of emissions test results in 40 CFR part 60, subparts L and La will ultimately reduce the burden on regulated facilities, delegated air agencies, and the EPA, and also improve access to data, minimize data reporting errors, and eliminate paper waste and redundancies.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations (people of color), low-income populations, and Indigenous peoples (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal government actions (86 FR 7009; January 20, 2021). The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [2] The EPA further defines fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution. For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,*[3] which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through this action under development.

The Agency has conducted an analysis of the demographics of the populations living near existing facilities in the Secondary Lead Smelting source category. Because this action finalizes standards of performance for new, modified, and reconstructed sources that commence construction after December 1, 2022, the locations of the construction of new secondary lead smelters are not known. As discussed above, we assumed two existing facilities might be modified. However, it is not known with any

[2] See *https://www.epa.gov/environmentaljustice.*

[3] See *https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis.*

certainty which of the existing secondary lead smelters might be modified or reconstructed. Therefore, the demographic analysis was conducted for the 11 existing secondary lead smelters as a proxy for the characterization of the demographics in areas where new, modified, or reconstructed source might be located in the future.

Section F. (''What analysis of environmental justice did we conduct?'') of the proposal preamble (87 FR 73708) presents the full results of the demographic analysis. The analysis included an assessment of individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the existing facilities. We then compared the data from the analysis to the national average for each of the demographic groups. The results show that, for populations within 5 km of the 11 secondary lead smelters, the percent Hispanic or Latino population is higher than the national average (38 percent versus 19 percent). The percent of ''other and multiracial population'' and people living in linguistic isolation within the same geographic area are higher than the national average (12 percent versus 8 percent and 8 percent versus 5 percent, respectively). The percent of the population over 25 without a high school diploma is higher than the national average (19 percent versus 12 percent), while the percent of the population living below the poverty line is similar to the national average. The results of the analysis of populations within 50 km of the 11 secondary lead smelters are similar to the 5 km analysis.

The technical report, *Analysis of Demographic Factors for Populations Living Near Secondary Lead Smelting Source Category Operations,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481), presents the methodology and the results of the demographic analysis.

As indicated above, the locations of any new secondary lead smelting facilities that would be subject to NSPS subpart La are not known. Also, it is not known with any certainty which existing secondary lead smelters may be modified or reconstructed and subject to the NSPS subpart La. Thus, we are limited in our ability to estimate the potential EJ impacts of this rule. However, we anticipate the changes to the NSPS will generally minimize or reduce future emissions in surrounding communities of new, modified, or reconstructed facilities, including those communities with higher percentages of people of color. Furthermore, the EPA expects that the NSPS subpart La, will ensure compliance with the PM emissions and opacity limits at all times (including periods of SSM) via initial and periodic emissions testing. NSPS subpart La also codifies standards of performance reflecting improvements in PM control technologies that have occurred in the industry since promulgation of the current NSPS subpart L. Therefore, effects of emissions on populations in proximity to any future affected sources, including in communities potentially overburdened by pollution, which are often people of color, low-income, and Indigenous communities, will be minimized due to compliance with the standards of performance being finalized in this action.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to OMB under the PRA. The updated Information Collection Request (ICR) document that the EPA prepared for NSPS subpart L has been assigned EPA ICR number 1128.13, and the new ICR prepared for the final NSPS subpart La has been assigned EPA ICR number 2729.01. You can find copies of the ICRs in the docket for this rule, and they are briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is finalizing amendments to the existing NSPS (40 CFR part 60, subpart L) that:

- Require periodic testing for PM emissions.
- Incorporate monitoring, recordkeeping, and reporting requirements that are consistent with NESHAP subpart X.
- Require electronic reporting of performance test results.

A summary of the ICR for NSPS subpart L follows:

Respondents/affected entities: Secondary lead smelting facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart L).

Estimated number of respondents: Nine existing facilities subject to 40 CFR part 60, subpart L.

Frequency of response: Annually.

Total estimated burden: The annual recordkeeping and reporting burden for facilities to comply with all the requirements in the NSPS is estimated to be 228 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting costs for all facilities to comply with all the requirements in the NSPS is estimated to be $27,000 (per year).

The EPA is also finalizing a new subpart (40 CFR part 60, subpart La) for new, modified, or reconstructed facilities that commenced construction, reconstruction, or modification after December 1, 2022, that:

- Includes definitions for ''blast furnace,'' ''lead,'' ''reverberatory furnace,'' and ''secondary lead smelter'' that are the same as NSPS subpart L.
- Includes a definition for ''process fugitive emissions source'' to be consistent with the definition used in NESHAP subpart X.
- Establishes a tighter PM limit (10 mg/dscm) for blast and reverberatory furnaces.
- Establishes a new PM limit (4.9 mg/dscm) for process fugitive emissions sources.
- Establishes a tighter opacity limit (5 percent) for blast, reverberatory, and process fugitive emissions sources.
- Removes the exemptions for periods of SSM.
- Requires initial and periodic testing for PM emissions and opacity.
- Incorporates monitoring, recordkeeping, and reporting requirements that are consistent with the NESHAP (40 CFR part 63, subpart X).
- Requires electronic reporting of performance test results.

A summary of the ICR for NSPS subpart La follows:

Respondents/affected entities: Secondary lead smelting facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart La).

Estimated number of respondents: Three facilities (two reconstructed and one new source) in the next 3 years.

Frequency of response: Annually.

Total estimated burden: The annual recordkeeping and reporting burden for facilities to comply with all the requirements in the NSPS is estimated to be 127 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting costs for all

facilities to comply with all the requirements in the NSPS is estimated to be $14,000 (per year).

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA.

This action will not impose any significant requirements on small entities. Details of the analysis in support of this determination are presented in the memorandum titled, *Economic Impact Analysis and Small Business Screening Assessment for Final Revisions and Amendments to the New Source Performance Standards for Secondary Lead Smelters,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments, and there are no nationwide annualized costs of this final rule for affected industrial sources in the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249; November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This final rule imposes requirements on owners and operators of secondary lead smelting facilities and not tribal governments. The EPA does not know of any secondary lead smelting facilities owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The EPA does not believe there are disproportionate risks to children because the new NSPS subpart La lowers PM emissions and opacity from new, modified, or reconstructed secondary lead smelters compared to the current NSPS, which will benefit children's health. Additionally, the periodic PM emissions and opacity testing requirements of NSPS subparts La and L, and the updated monitoring, recordkeeping, and reporting requirements, improve compliance with emission limits, which also benefits children's health.

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

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

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

This action involves technical standards. The EPA is requiring use of EPA Method 5 (Determination of Particulate Matter emissions from Stationary Sources) to measure filterable PM and EPA Method 9 (Visual Determination of the Opacity of Emissions from Stationary Sources) to determine visible emissions from blast and reverberatory process vents and process fugitive emissions. Therefore, the EPA conducted searches for the Secondary Lead Smelting NSPS through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases.

We conducted searches for EPA Methods 1, 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, 2H, 3, 3A, 3C, 4, 5, 9, 12, 22, and 29 of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for a particular VCS. No applicable VCS were identified for EPA Methods 1, 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, 2H, 3, 3A, 3C, 4, 5, 12, 22, or 29.

In this final action, the EPA incorporates by reference the VCS ASTM D7520–16, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere approved April 1, 2016'' which is an instrumental method to determine plume opacity in the outdoor ambient environment as an alternative to visual measurements made by certified smoke readers in accordance with EPA Method 9. The concept of ASTM D7520–16, also known as the Digital Camera Opacity Technique or DCOT, is a test protocol to determine the opacity of visible emissions using a digital camera. This method is based on previous method development using digital still cameras and field testing of those methods. The purpose of ASTM D7520–16 is to set a minimum level of performance for products that use DCOT to determine plume opacity in ambient environments.

The DCOT method is an acceptable alternative to EPA Method 9 with the following caveats:

- During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520–16, you or the DCOT

vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).

• You must also have SOP in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in section 8.1 of ASTM D7520–16.

• You must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEG files used for opacity and certification determination.

• You or the DCOT vendor must have a minimum of four independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error must not exceed 7.5 percent opacity.

• This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor. This method describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a DCOT that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity.

The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 8329555; *service@astm.org.*

The EPA is finalizing the use of the guidance document, EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS Fabric Filter Bag Leak Detection Guidance, September 1997. This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors. The document includes fabric filter and monitoring system descriptions; guidance on monitor selection, installation, setup, adjustment, and operation; and quality assurance procedures. Several types of instruments are available to monitor changes in particulate emission rates for the purpose of detecting fabric filter bag leaks or similar failures. The principles of operation of these instruments include electrical charge transfer and light scattering. The document is available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000D5T6.PDF.*

Additional information for the VCS search and determinations can be found in the docket for this final action (Docket ID No. EPA–HQ–OAR–2022–0481).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

Executive Order 14096 (88 FR 25251, Apr. 26, 2023) directs federal agencies to advance the goal of environmental justice for all. This action builds upon and supplements the efforts of Executive Order 12898 (59 FR 7629, February 16, 1994) to address environmental justice.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. The locations of future new, modified, and reconstructed secondary lead smelters are not known with any certainty. Therefore, we evaluated the populations living near existing secondary lead smelters as a proxy for the characteristics of the demographics in areas where a new, modified, or reconstructed source might locate in the future. The result of the analysis shows that the percent Hispanic or Latino population, ''other and multiracial population'' and people living in linguistic isolation within the same geographic area, over 25 without a high school diploma are higher than the national average.

The EPA believes that this action is likely to reduce existing potential disproportionate and adverse effects on communities with environmental justice concerns. We anticipate the changes to the NSPS will generally minimize or reduce future emissions in these communities that are in proximity to new, modified, or reconstructed facilities. Specifically, the EPA expects that the Standards of Performance for Secondary Lead Smelters Constructed after December 1, 2022, will ensure compliance with the PM and opacity limits at all times (including periods of SSM) via initial and periodic emissions testing and parametric monitoring of control devices. Subpart La also codifies improvements in PM control technologies that have occurred in the industry since promulgation of the current NSPS subpart L. Therefore, effects of emissions on populations in proximity to any future affected sources, including in communities with environmental justice concerns, will be minimized due to compliance with the standards of performance being finalized in this action.

The information supporting this Executive Order review is contained in a technical report, *Analysis of Demographic Factors for Populations Living Near Secondary Lead Smelting Source Category Operations,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481), and in section IV.F. of the proposed rule's preamble (87 FR 73708), as well as summarized in section V.F. of this preamble.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

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

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Amend § 60.17 by revising paragraphs (h)(206) and (j)(2) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(206) ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient

Atmosphere, approved April 1, 2016; IBR approved for §§ 60.123(c)(6); 60.123(c)(6)(i); 60.123(c)(6)(ii); 60.123(c)(6)(v); 60.123a(c)(6)(ii); 60.123a(c)(6)(ii)(A); 60.123a(c)(6)(ii)(B); 60.123a(c)(6)(ii)(E); 60.271(k); 60.272(a) and (b); 60.273(c) and (d); 60.274(h); 60.275(e); 60.276(c); 60.271a; 60.272a(a) and (b); 60.273a(c) and (d); 60.274a(h); 60.275a(e); 60.276a(f); 60.271b; 60.272b(a) and (b); 60.273b(c) and (d); 60.274b(h); 60.275b(e); 60.276b(f); 60.374a(d).

* * * * *

(j) * * *

(2) EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, September 1997, *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000D5T6.PDF;* IBR approved for §§ 60.124(f); 60.124a(f); 60.273(e); 60.273a(e); 60.273b(e); 60.373a(b); 60.2145(r); 60.2710(r); 60.4905(b); 60.5225(b).

* * * * *

Subpart L—Standards of Performance for Secondary Lead Smelters for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and On or Before December 1, 2022

■ 3. Revise the heading for subpart L to part 60 to read as set forth above.

■ 4. Amend § 60.120 by revising paragraph (b) to read as follows:

§ 60.120 Applicability and designation of affected facility.

* * * * *

(b) Any facility under paragraph (a) of this section that commences construction or modification after June 11, 1973, and on or before December 1, 2022, is subject to the requirements of this subpart.

■ 5. Amend § 60.122 by revising paragraph (a)(1) to read as follows:

§ 60.122 Standard for particulate matter.

(a) * * *

(1) Contain particulate matter (PM) in excess of 50 milligrams per dry standard cubic meter, mg/dscm (0.022 grains per dry standard cubic feet, gr/dscf).

* * * * *

■ 6. Revise § 60.123 to read as follows:

§ 60.123 Test methods and procedures.

(a) *Initial performance tests.* The owner or operator shall conduct performance tests to demonstrate initial compliance with the PM emission and opacity standards specified in § 60.122.

(b) *Periodic performance tests.* After November 20, 2023, the owner or operator shall conduct periodic performance tests to demonstrate compliance with the PM emissions standards specified in § 60.122(a). The owner or operator shall conduct the first periodic test by no later than July 31, 2024. The owner or operator shall conduct subsequent periodic tests according to the schedule specified in paragraph (b)(1) or (2) of this section.

(1) Conduct performance tests no later than 12 months following the previous compliance test.

(2) Conduct performance tests no later than 24 months following the previous compliance test if the previous compliance test measured PM emissions of 25 mg/dscm or less and the owner or operator has obtained approval from the Administrator for a written request to extend the period of the periodic performance test. The extension request will be deemed automatically approved if the owner or operator submits the results of a PM performance test of 25 mg/dscm or less, the owner or operator submits the request for the extension within 4 months after the subject compliance test, and the Administrator does not provide a response to such request within 6 months of submission.

(c) *Test methods.* In conducting the performance tests required in § 60.8, the owner or operator shall use the following EPA reference test methods and procedures in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(1) EPA Method 1 at appendix A–1 to this part to select sampling port locations and the number of traverse points.

(2) EPA Method 2 at appendix A–1 to this part or EPA Method 5D at appendix A–3 to this part, section 8.3 for positive fabric filters, to measure the volumetric flow rate of the gas stream.

(3) EPA Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2 to determine the dry molecular weight of the stack gas and concentrations of carbon dioxide and oxygen in the sample gas.

(4) EPA Method 4 at appendix A–3 to this part to determine the moisture content of the gas stream.

(5) EPA Method 5 or 5D at appendix A–3 to this part to measure PM concentrations. The EPA Method 5 tests shall be conducted during representative periods of furnace operation, including charging and tapping, and the sampling time and sample volume for each test run shall be at least 60 minutes and 0.90 dscm (31.8 dscf), respectively. As an alternative to using EPA Method 5, owners or operators may measure PM emissions by the following methods:

(i) EPA Method 12 at appendix A–5 to this part (see section 16.1 of Method 12) to measure PM and inorganic lead concentrations.

(ii) EPA Method 29 at appendix A–8 to this part to measure metal (lead) concentrations and PM (see section 1.2 of Method 29).

(6) EPA Method 9 at appendix A–4 to this part and the procedures specified in § 60.11 for determining opacity. ASTM D7520–16 (incorporated by reference at § 60.17) is an acceptable alternative to EPA Method 9 with the specified conditions in paragraphs (c)(6)(i) through (v) of this section.

(*i*) During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520–16 (incorporated by reference at § 60.17), the owner or operator or the DCOT vendor shall present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).

(ii) The owner or operator shall also have standard operating procedures (SOPs) in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in section 8.1 of ASTM D7520–16 (incorporated by reference at § 60.17). Records shall be maintained in a form suitable and readily available for expeditious review.

(iii) The owner or operator shall follow the recordkeeping procedures outlined in § 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.

(iv) The owner or operator or the DCOT vendor shall have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error shall not exceed 7.5 percent opacity.

(v) This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 (incorporated by reference at § 60.17) and this section is on the owner or operator, DCOT operator, and DCOT vendor.

■ 7. Add §§ 60.124 and 60.125 to subpart L to read as follows:

§ 60.124 Monitoring requirements.

(a) The owner shall comply with the applicable monitoring requirements specified in the NSPS General provision § 60.13.

(b) The owner shall prepare, and at all times operate according to, a SOP manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters or cartridge filters) used to reduce PM and opacity emissions from any affected source subject to the emissions standards in § 60.122.

(c) The owner shall submit the SOP manual for the baghouses (fabric filters or cartridge collectors) described in paragraph (b) of this section to the Administrator or delegated authority for review and approval.

(d) The procedures specified in the SOP manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (d)(1) through (9) of this section.

(1) Daily monitoring of the pressure drop across each baghouse cell.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Monthly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(9) Continuous operation of a bag leak detection system.

(e) The procedures specified in the SOP manual for baghouse maintenance shall include, at a minimum, a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(f) The bag leak detection system required by paragraph (d)(9) of this section, shall meet the specification and requirements of paragraphs (f)(1) through (8) of this section.

(1) The bag leak detection system shall be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 50.0 mg/dscm (0.022 gr/dscf) or less.

(2) The bag leak detection system sensor shall provide output of relative PM loadings.

(3) The bag leak detection system shall be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(4) The owner shall install and operate the bag leak detection system in a manner consistent with the guidance provided in EPA–454/R–98–015, Office of Air quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance, (incorporated by reference, see § 60.17) or the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, the owner shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved SOP manual required under paragraph (b) of this section. The owner cannot increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless such adjustment follows a complete baghouse inspection that demonstrates that the baghouse is in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the owner shall install the bag leak detector downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(g) The owner shall include in the SOP manual required by paragraph (b) of this section a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to minimize emissions as specified in paragraphs (g)(1) and (2) of this section.

(1) The procedures used to determine the cause of the alarm shall be initiated within 30 minutes of the alarm.

(2) The cause of the alarm shall be alleviated by taking the necessary corrective action(s) that may include, but not be limited to, those listed in paragraphs (g)(2)(i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the PM emissions.

(h) Baghouses equipped with high-efficiency particulate air (HEPA) filters as a secondary filter used to control emissions from any source subject to the PM and opacity emission standards in § 60.122 are exempt from the requirement to be equipped with a bag leak detection system. The owner or operator shall monitor and record the pressure drop across each HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, the owner or operator shall take appropriate corrective measures, which may include but not be limited to those given in paragraphs (h)(1) through (4) of this section.

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other control devices

(4) Shutting down the process producing the particulate emissions.

(i) Baghouses followed by a wet electrostatic precipitator (WESP) used as a secondary control device for any source subject to the PM and opacity emission standards in § 60.122 are exempt from the requirement to be equipped with a bag leak detection system.

(j) If a wet scrubber is used to demonstrate continuous compliance with the PM emissions standards for blast and reverberatory furnaces specified in § 60.122(a), the owner or operator shall monitor and record the pressure drop and water flow rate of the wet scrubber during the initial

performance or periodic compliance test conducted to demonstrate compliance with the PM emissions limit under § 60.122(a). Thereafter, the owner or operator shall monitor and record the pressure drop and water flow rate values at least once every hour and maintain the pressure drop and water flow rate at levels no lower than 30 percent below the pressure drop and water flow rate measured during the initial performance or compliance test.

(k) During the initial performance test required by § 60.123(a), or any periodic performance test required by § 60.123(b), the owner or operator shall establish the value or range of values of the monitoring parameter(s) for each control device used to comply with the PM and opacity emission standards specified in § 60.122.

(l) If an affected source is subject to the monitoring requirements specified in 40 CFR part 63, subpart X (National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting) and those requirements are as stringent or more stringent than the monitoring requirements specified in paragraphs (a) through (j) of this section, compliance with the monitoring requirements specified in 40 CFR part 63, subpart X also demonstrates compliance with the monitoring requirements specified in paragraphs (a) through (k) of this section.

§ 60.125 Notification, recordkeeping, and reporting requirements.

(a) The owner or operator shall comply with the applicable notification and recordkeeping requirements specified in § 60.7 and the reporting requirements specified in the NSPS General Provisions § 60.19.

(1) Records shall be maintained in a form suitable and readily available for expeditious review, according to § 60.7(f). However, electronic recordkeeping and reporting may be used if suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy), and when required by this subpart.

(2) Records shall be kept on site for at least 2 years after the date of occurrence, measurement, maintenance, corrective action, report, or record, according to § 60.7(f).

(b) The SOP manual required in § 60.124(b) shall be submitted to the Administrator in electronic format for review and approval of the initial submittal and whenever an update is made to the procedure.

(c) The owner or operator shall maintain for a period of 2 years, records of the information listed in paragraphs (c)(1) through (10) of this section.

(1) Electronic records of the bag leak detection system output.

(2) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected.

(3) All records of inspections and maintenance activities required under § 60.124(d) as part of the practices described in the SOP manual for baghouses required under § 60.124(b).

(4) Electronic records of the pressure drop and water flow rate values for wet scrubbers used to control PM emissions from blast or reverberatory furnaces as required in § 60.124(j).

(5) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(6) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(7) Records of all alarms from the bag leak detection system specified in § 60.124(d)(9).

(8) Records maintained as part of the practices described in the SOP manual for baghouses required under § 60.124(b), including an explanation of the periods when the procedures were not followed, and the corrective actions taken.

(9) Record of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 60.124(j), and an explanation of the corrective actions taken.

(10) Records of the rationale for the control device monitoring parameter value(s), established as specified in § 60.124(k), monitoring frequency, and averaging time. Include all data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous compliance with the applicable emission standard.

(d) In addition to the reporting requirements specified in § 60.7 and § 60.19, the owner or operator shall submit the results of the initial and periodic performance tests within 60 days after the date of completing each performance test required by this subpart, following the procedures specified in paragraphs (d)(1) through (3) of this section.

(1) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test. Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov*). The data shall be submitted in a file format generated using the EPA's ERT. Alternatively, the owner or operator may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test shall be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) Confidential business information (CBI).

(i) The EPA will make all the information submitted through CEDRI available to the public without further notice to the owner or operator. Do not use CEDRI to submit information that the owner or operator claims as CBI. Although we do not expect persons to assert a claim of CBI, if the owner or operator wishes to assert a CBI claim for some of the information submitted under paragraph (a)(1) or (2) of this section, the owner or operator shall submit a complete file, including information claimed to be CBI, to the EPA.

(ii) The file shall be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website.

(iii) Clearly mark the part or all of the information that the owner or operator claims to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

(iv) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions shall be transmitted directly to the OAQPS CBI Office at the

email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and be flagged to the attention of the Group Leader, Measurement Policy Group. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if the owner or operator does not have a file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link.

(v) If the owner or operator cannot transmit the file electronically, the owner or operator may send CBI information through the postal service to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Group Leader, Measurement Policy Group. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(vi) All CBI claims shall be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(vii) The owner or operator shall submit the same file submitted to the CBI office with the CBI omitted to the EPA through CEDRI via the EPA's CDX as described in paragraphs (d)(1) and (2) of this section.

(e) Claims of EPA system outage. If the owner or operator is required to electronically submit a report through CEDRI in the EPA's CDX, the owner or operator may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, the owner or operator shall meet the requirements outlined in paragraphs (e)(1) through (7) of this section.

(1) The owner or operator shall have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage shall have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) The owner or operator shall submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) The owner or operator shall provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator proposes to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the owner or operator reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report shall be submitted electronically as soon as possible after the outage is resolved.

(f) *Claims of force majeure.* If the owner or operator is required to electronically submit a report through CEDRI in the EPA's CDX, the owner or operator may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure,* the owner or operator shall meet the requirements outlined in paragraphs (f)(1) through (5) of this section.

(1) The owner or operator may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) The owner or operator shall submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) The owner or operator shall provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator proposes to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the owner or operator reported.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting shall occur as soon as possible after the *force majeure* event occurs.

■ 8. Add subpart La consisting of §§ 60.120a through 60.125a to part 60 to read as follows:

Subpart La—Standards of Performance for Secondary Lead Smelters for Which Construction, Reconstruction, or Modification Commenced After December 1, 2022

Sec.
60.120a Applicability and designation of affected facility.
60.121a Definitions.
60.122a Standard for particulate matter.
60.123a Test methods and procedures.
60.124a Monitoring requirements.
60.125a Notification, recordkeeping, and reporting requirements.

Subpart La—Standards of Performance for Secondary Lead Smelters for Which Construction, Reconstruction, or Modification Commenced After December 1, 2022

§ 60.120a Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in secondary lead smelters: Process fugitive emissions sources, blast (cupola) furnaces, and reverberatory furnaces.

(b) Any facility under paragraph (a) of this section that commences construction, reconstruction, or modification after November 20, 2023, is subject to the requirements of this subpart.

§ 60.121a Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

Blast furnace means any furnace used to recover metal from slag.

Lead means elemental lead or alloys in which the predominant component is lead.

Process fugitive emissions source means a source of particulate matter (PM) emissions at a secondary lead smelter that is associated with lead smelting or refining including, but not limited to, smelting furnace charging points; smelting furnace lead and slag taps; pot and refining furnaces; and casting kettles.

Reverberatory furnace includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.

Secondary lead smelter means any facility producing lead from a lead-bearing scrap material by smelting to the metallic form.

§ 60.122a Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from a blast (cupola) or reverberatory furnace any gases which:

(1) Contain PM in excess of 10 milligrams per dry standard cubic meter, mg/dscm (0.0044 grains per dry standard cubic feet, gr/dscf).

(2) Exhibit opacity greater than 5 percent.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any process fugitive emissions source any gases which:

(1) Contain PM in excess of 4.9 mg/dscm (0.0021 grains per dry standard cubic feet, gr/dscf).

(2) Exhibit opacity greater than 5 percent.

(c) The PM and opacity emissions standards specified in paragraphs (a) and (b) of this section apply at all times, including periods of startup, shutdown, and malfunction.

§ 60.123a Test methods and procedures.

(a) *Initial performance tests.* The owner or operator shall conduct performance tests to demonstrate initial compliance with the PM and opacity emission standards specified in § 60.122a.

(b) *Periodic performance tests.* Following the initial compliance demonstration required by paragraph (a) of this section, the owner or operator shall conduct periodic performance tests to demonstrate compliance with the PM and opacity emissions standards specified in § 60.122a according to the schedule specified in paragraph (b)(1) or (2) of this section.

(1) Conduct performance tests no later than 12 months following the previous compliance test.

(2) Conduct performance tests up to 24 calendar months following the previous compliance test if the previous compliance test measured PM emissions equal to or less than the concentrations specified in paragraphs (b)(2)(i) and (ii) of this section and the owner or operator has obtained approval from the Administrator for a written request to extend the period of the periodic performance test. The extension request will be deemed automatically approved if the owner or operator submits the results of a PM performance test equal to or less than the applicable concentrations specified in paragraphs (b)(2)(i) and (ii) of this section, the owner or operator submits the request for the extension within 4 months after the subject compliance test, and the Administrator does not provide a response to such request within 6 months of submission.

(i) 5 mg/dscm for blast and reverberatory furnaces.

(ii) 2.4 mg/dscm for process fugitive emissions sources.

(c) *Test methods.* In conducting the performance tests required in § 60.8, the owner or operator shall use the following EPA reference test methods and procedures in appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(1) EPA Method 1 at appendix A–1 to this part for selecting sampling port locations and the number of traverse points.

(2) EPA Method 2 at appendix A–1 to this part at appendix A–1 to this part or EPA Method 5D at appendix A–3 to this part, section 8.3 for positive fabric filters, to measure the volumetric flow rate of the gas stream.

(3) EPA Method 3, 3A, 3B, or 3C at appendix A–1 to this part to determine the dry molecular weight of the stack gas and the concentrations of carbon dioxide and oxygen in the sample gas.

(4) EPA Method 4 at appendix A–3 to this part to determine the moisture content of the gas stream.

(5) EPA Method 5 or 5D at appendix A–3 to this part for measuring PM concentrations. The EPA Method 5 or 5D tests shall be conducted during representative periods of furnace operation, including charging and tapping, and the sampling time and sample volume for each test run shall be at least 60 minutes and 0.90 dscm (31.8 dscf), respectively. As an alternative to using EPA Method 5, owners or operators may measure PM emissions by the following methods:

(i) EPA Method 12 at appendix A–5 to this part (see section 16.1 of Method 12) to measure inorganic lead concentrations and PM.

(ii) EPA Method 29 at appendix A–8 to this part to measure metal (lead) concentrations and PM (see section 1.2 of Method 29).

(6) EPA Method 9 at appendix A–4 to this part and the procedures specified in § 60.11 for determining opacity. Owners or operators may use the following methods as alternatives to EPA Method 9 as applicable and appropriate:

(i) EPA Method 22 (Visual Determination of Fugitive Emissions) at appendix A–7 to this part for determining no visible emissions.

(ii) ASTM D7520–16 (incorporated by reference at § 60.17) is an acceptable alternative with the specified conditions in paragraphs (c)(6)(ii)(A) through (E) of this section.

(A) During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520–16 (incorporated by reference at § 60.17), the owner or operator or the DCOT vendor shall present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).

(B) The owner or operator shall also have standard operating procedures (SOPs) in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in section 8.1 of ASTM D7520–16 (incorporated by reference at § 60.17).

(C) The owner or operator shall follow the recordkeeping procedures outlined in § 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.

(D) The owner or operator or the DCOT vendor shall have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of *any one* reading and the average error shall not exceed 7.5 percent opacity.

(E) This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16

(incorporated by reference at § 60.17) and this section is on the owner or operator, DCOT operator, and DCOT vendor.

§ 60.124a Monitoring requirements.

(a) The owner shall comply with the applicable monitoring requirements specified in § 60.13.

(b) The owner shall prepare, and at all times operate according to, an SOP manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters or cartridge filters) used to reduce PM and opacity emissions from any affected source subject to the emissions standards in § 60.122a.

(c) The owner shall submit the SOP manual for the baghouses (fabric filters or cartridge collectors) described in paragraph (b) of this section to the Administrator or delegated authority for review and approval.

(d) The procedures specified in the SOP manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (d)(1) through (9) of this section.

(1) Daily monitoring of the pressure drop across each baghouse cell.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Monthly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(9) Continuous operation of a bag leak detection system.

(e) The procedures specified in the SOP manual for baghouse maintenance shall include, at a minimum, a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(f) The bag leak detection system required by paragraph (d)(9) of this section, shall meet the specification and requirements of paragraphs (f)(1) through (8) of this section.

(1) The bag leak detection system shall be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 50.0 mg/dscm (0.022 gr/dscf) or less.

(2) The bag leak detection system sensor shall provide output of relative PM loadings.

(3) The bag leak detection system shall be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(4) The owner shall install and operate the bag leak detection system in a manner consistent with the guidance provided in EPA–454/R–98–015, Office of Air quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance (incorporated by reference, see § 60.17) or the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, the owner shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved SOP manual required under paragraph (b) of this section. The owner cannot increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless such adjustment follows a complete baghouse inspection that demonstrates that the baghouse is in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the owner shall install the bag leak detector downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(g) The owner shall include in the SOP manual required by paragraph (b) of this section a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to minimize emissions as specified in paragraphs (g)(1) and (2) of this section.

(1) The procedures used to determine the cause of the alarm shall be initiated within 30 minutes of the alarm.

(2) The cause of the alarm shall be alleviated by taking the necessary corrective action(s) that may include, but not be limited to, those listed in paragraphs (g)(2)(i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the PM emissions.

(h) Baghouses equipped with high-efficiency particulate air (HEPA) filters as a secondary filter used to control emissions from any source subject to the PM and opacity emission standards in § 60.122a are exempt from the requirement to be equipped with a bag leak detection system. The owner or operator shall monitor and record the pressure drop across each HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, the owner or operator shall take appropriate corrective measures, which may include but not be limited to those given in paragraphs (h)(1) through (4) of this section.

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other control devices.

(4) Shutting down the process producing the particulate emissions.

(i) Baghouses followed by a wet electrostatic precipitator (WESP) used as a secondary control device for any source subject to the PM and opacity emission standards in § 60.122a are exempt from the requirement to be equipped with a bag leak detection system.

(j) If a wet scrubber is used to demonstrate continuous compliance with the PM emissions standards for blast and reverberatory furnaces specified in § 60.122a(a), the owner or

operator shall monitor and record the pressure drop and water flow rate of the wet scrubber during the initial performance or annual compliance test conducted to demonstrate compliance with the PM emissions limit under § 60.122a(a). Thereafter, the owner or operator shall monitor and record the pressure drop and water flow rate values at least once every hour and maintain the pressure drop and water flow rate at levels no lower than 30 percent below the pressure drop and water flow rate measured during the initial performance or compliance test.

(k) During the initial performance test required by § 60.123a(a), or any periodic performance test required by § 60.123a(b), the owner or operator shall establish the value or range of values of the monitoring parameter(s) for each control device used to comply with the PM and opacity emission standards specified in § 60.122a.

(l) If an affected source is subject to the monitoring requirements specified in 40 CFR part 63, subpart X (National Emissions Standards for Hazardous Air Pollutants from Secondary Lead Smelting) and those requirements are as stringent or more stringent than the monitoring requirements specified in paragraphs (a) through (j) of this section compliance with 40 CFR part 63, subpart X also demonstrates compliance with the monitoring requirements specified in paragraphs (a) through (k) of this section.

§ 60.125a Notification, recordkeeping, and reporting requirements.

(a) The owner or operator shall comply with the applicable notification and recordkeeping requirements specified in § 60.7 and the reporting requirements specified in § 60.19.

(1) Records shall be maintained in a form suitable and readily available for expeditious review, according to § 60.7(f). However, electronic recordkeeping and reporting may be used if suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy), and when required by this subpart.

(2) Records shall be kept on site for at least 2 years after the date of occurrence, measurement, maintenance, corrective action, report, or record, according to § 60.7(f).

(b) The SOP manual required in § 60.124a(b) shall be submitted to the Administrator in electronic format for review and approval of the initial submittal and whenever an update is made to the procedure.

(c) The owner or operator shall maintain for a period of 2 years, records of the information listed in paragraphs (c)(1) through (10) of this section.

(1) Electronic records of the bag leak detection system output.

(2) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected.

(3) All records of inspections and maintenance activities required under § 60.124a(d) as part of the practices described in the SOP manual for baghouses required under § 60.124a(b).

(4) Electronic records of the pressure drop and water flow rate values for wet scrubbers used to control PM emissions from blast or reverberatory furnaces as required in § 60.124a(j).

(5) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(6) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(7) Records of all alarms and corrective actions taken for the bag leak detection system specified in § 60.124a(d)(9).

(8) Records maintained as part of the practices described in the SOP manual for baghouses required under § 60.124a(b), including an explanation of the periods when the procedures were not followed, and the corrective actions taken.

(9) Record of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 60.124a(j), and an explanation of the corrective actions taken.

(10) Records of the rationale for the control device monitoring parameter value(s), established as specified in § 60.124a(k), monitoring frequency, and averaging time. Include all data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous compliance with the applicable emission standard.

(d) In addition to the reporting requirements specified in §§ 60.7 and 60.19, within 60 days after the date of completing each performance test required by this subpart, the owner or operator shall submit the results of the initial and periodic performance tests following the procedures as specified in paragraphs (d)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov*). The data shall be submitted in a file format generated using the EPA's ERT. Alternatively, the owner or operator may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test shall be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI).* (i) The EPA will make all the information submitted through CEDRI available to the public without further notice to the owner or operator. Do not use CEDRI to submit information the owner or operator claims as CBI. Although we do not expect persons to assert a claim of CBI, if the owner or operator wishes to assert a CBI claim for some of the information submitted under paragraph (a)(1) or (2) of this section, the owner or operator shall submit a complete file, including information claimed to be CBI, to the EPA.

(ii) The file shall be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website.

(iii) Clearly mark the part or all of the information that the owner or operator claims to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

(iv) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic

submissions shall be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and be flagged to the attention of the Group Leader, Measurement Policy Group. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if the owner or operator does not have a file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link.

(v) If the owner or operator cannot transmit the file electronically, the owner or operator may send CBI information through the postal service to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Group Leader, Measurement Policy Group. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(vi) All CBI claims shall be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(vii) The owner or operator shall submit the same file submitted to the CBI office with the CBI omitted to the EPA through CEDRI via the EPA's CDX as described in paragraphs (d)(1) and (2) of this section.

(e) If the owner or operator is required to electronically submit a report through CEDRI in the EPA's CDX, the owner or operator may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, the owner or operator shall meet the requirements outlined in paragraphs (e)(1) through (7) of this section.

(1) The owner or operator shall have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage shall have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) The owner or operator shall submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) The owner or operator shall provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator propose to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the owner or operator reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report shall be submitted electronically as soon as possible after the outage is resolved.

(f) If the owner or operator is required to electronically submit a report through CEDRI in the EPA's CDX, the owner or operator may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure,* the owner or operator shall meet the requirements outlined in paragraphs (f)(1) through (5) of this section.

(1) The owner or operator may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) The owner or operator shall submit notification to the Administrator in writing as soon as possible following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) The owner or operator shall provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which the owner or operator proposes to report, or if the owner or operator has already met the reporting requirement at the time of the notification, the date the owner or operator reported.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting shall occur as soon as possible after the *force majeure* event occurs.

[FR Doc. 2023–25275 Filed 11–17–23; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13–97, 07–243, 20–67; IB Docket No. 16–155; FCC 23–75; FR ID 183540]

Numbering Policies for Modern Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules regarding direct access to numbers by providers of interconnected Voice over internet Protocol (VoIP) services. The Commission takes this action in furtherance of Congress' directive in the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to examine ways to reduce access to telephone numbers by potential perpetrators of illegal robocalls. These actions safeguard U.S. numbering resources and consumers, protect national security interests, promote public safety, and reduce opportunities for regulatory arbitrage.

DATES: Effective December 20, 2023, except for the amendments to 47 CFR 52.15(g)(3)(ii)(B) through (F), (I), (K), (L), and (N) and (g)(3)(x)(A) (amendatory instruction 3), which are delayed indefinitely. The amendments to 47 CFR

52.15(g)(3)(ii)(B) through (F), (I), (K), (L), and (N) and (g)(3)(x)(A) will become effective following publication of a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Mason Shefa, at (202) 418–2494, *mason.shefa@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (*Second Report and Order*) in WC Docket Nos. 13–97, 07–243, 20–67, and IB Docket No. 16–155, FCC 23–75, adopted on September 21, 2023, and released on September 22, 2023. The document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-75A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. This document will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

Congressional Review Act

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

Amendatory Instructions

Amendatory instructions are the standard terms that the Office of the Federal Register uses to give specific instructions on how to change the CFR. Due to the extensive number of technical and conforming amendments to 47 CFR 52.15(g)(3), including redesignations of existing paragraphs within the current rule, that will become effective 30 days following publication of this document, the Commission is utilizing the Office of the Federal Register's amendatory instruction ''revise and republish'' to codify the revisions to that paragraph. Use of this combined instruction allows the Commission to republish 47 CFR 52.15(g)(3) 30 days following publication of this document instead of using piecemeal amendments to revise the CFR. All other amendments, including subsequent amendments to 47 CFR 52.15(g)(3) that are delayed indefinitely, are made pursuant to specific amendatory instructions.

Synopsis

1. We adopt the *Second Report and Order* to further stem the tide of illegal robocalls perpetrated by interconnected VoIP providers, to protect the Nation's numbering resources from abuse by foreign bad actors, and to advance other important public policy objectives tied to the use of our Nation's limited numbering resources. To that end, we strategically update the Commission's direct access to numbering process. First, we require applicants seeking direct access to numbering resources to make robocall-related certifications to help ensure compliance with our rules targeting illegal robocalls. Second, we require applicants to disclose and keep current information about their ownership, including foreign ownership, to mitigate the risk of providing bad actors abroad with access to our numbering resources. Third, we require applicants to certify to their compliance with other Commission rules applicable to interconnected VoIP providers to bolster awareness and compliance with such rules. Fourth, we require applicants to comply with state laws and registration requirements that are applicable to businesses in each state in which numbers are requested. Fifth, we require applicants to include a signed declaration that their applications are true and accurate. Sixth, and finally, we codify the Wireline Competition Bureau's (Bureau) application review, application rejection, and authorization revocation processes.

2. Section 52.15(g)(2) of the Commission's rules governs the application process for numbering resources. It limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which they are requesting numbers. The North American Numbering Plan (NANP) is the basic numbering scheme for telecommunications networks located in the United States and its territories, Canada, and parts of the Caribbean. NANP telephone numbers are ten-digit numbers consisting of a three-digit area code, followed by a three-digit central office code, followed by a four-digit line number. The Commission has interpreted § 52.15(g)(2) to require evidence of either a state certificate of public convenience and necessity (CPCN) or a Commission license or authorization. Because only telecommunications carriers were able to provide this proof of authorization, in 2015, the Commission revised its numbering rules and adopted a process by which interconnected VoIP providers could satisfy this authorization requirement and thus obtain numbers directly from the Numbering Administrator. In the *Second Report and Order,* we refer to both the North American Numbering Plan Administrator and the Pooling Administrator as the Numbering Administrator. Although these functions are described separately in our rules, *see, e.g.,* 47 CFR 52.13, 52.20, they are currently combined under a single Commission contract. The Commission found that permitting interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrator would improve responsiveness in the number porting process and improve the visibility and accuracy of number utilization, which would in turn enable the Commission to more effectively protect our Nation's limited numbering resources. Moreover, the Commission found that this change to its authorization process would enhance its ability to enforce rules governing interconnected VoIP providers, and help stakeholders and the Commission identify the source of routing problems and take corrective actions.

3. The Commission's rules now require interconnected VoIP providers obtaining numbering resources to comply with both the requirements applicable to telecommunications carriers seeking to obtain numbering resources and certain interconnected VoIP-specific requirements for applying for, and maintaining, a Commission authorization for direct access to numbering resources. Section 52.15(g) currently requires an interconnected VoIP applicant for direct access to numbering resources to: provide its company name, headquarters address, Operating Company Number (OCN), parent company's OCN(s), and the primary type of business in which the numbering resources will be used; provide contact information for personnel qualified to address issues relating to regulatory requirements, numbering, compliance, 911, and law

enforcement; comply with applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements (in particular, filing Numbering Resource Utilization and Forecast (NRUF) Reports); comply with guidelines and procedures adopted pursuant to numbering authority delegated to the states; and comply with industry guidelines and practices applicable to telecommunications carriers with regard to numbering; file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrator; provide proof it is or will be capable of providing service within sixty (60) days of the numbering resources activation date in accordance with 47 CFR 52.15(g)(2), *i.e.,* ''facilities readiness''; certify that it complies with its Universal Service Fund contribution obligations, its Telecommunications Relay Service contribution obligations, its NANP and local number portability administration contribution obligations, its obligations to pay regulatory fees, and its 911 obligations; certify that it has the requisite technical, managerial, and financial capacity to provide service; include the name of its key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent; and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order; and certify that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

4. The Commission directed and delegated authority to the Bureau to ''implement and maintain the authorization process.'' Bureau staff review applications for conformance with procedural rules, and if the rule requirements are satisfied, release an ''Accepted-for-Filing Public Notice'' seeking comment on the application. Applications are deemed granted by the Commission on the 31st day after the release of the public notice, unless the Bureau notifies the applicant that the grant will not be automatically effective. The Bureau may halt the auto-grant process if (1) an applicant fails to respond promptly to Commission inquiries, (2) an application is associated with a non-routine request for waiver of the Commission's rules, (3) timely filed comments on the application raise public interest concerns that require further Commission review, or (4) the Bureau determines that the request requires further analysis to determine whether the application serves the public interest.

5. Once an interconnected VoIP provider has Commission authorization to obtain numbering resources, it may request numbers directly from the Numbering Administrator. Interconnected VoIP providers that apply for and receive Commission authorization for direct access to numbering resources ''are subject to, and acknowledge, Commission enforcement authority.'' Failure to comply with the obligations set out by the Commission ''could result in revocation of the Commission's authorization, the inability to obtain additional numbers pending that revocation, reclamation of unassigned numbers already obtained directly from the Numbering Administrators, or enforcement action.'' The Commission delegated authority to both the Bureau and the Enforcement Bureau to order the revocation of authorization and to direct the Numbering Administrator to reclaim any of the service provider's unassigned numbers.

6. Based on lessons learned from reviewing scores of direct access applications since the 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), the Commission began to consider ways to update the interconnected VoIP provider application requirements to add important information that is useful or necessary to the Bureau's public interest review. To date, the Bureau has requested such information from applicants on a case-by-case basis where appropriate. For example, certain applications with significant foreign ownership that raise potential national security and/or law enforcement issues have been filed. Additionally, direct access applications have been challenged by commenters raising concerns about intercarrier compensation and call routing or call blocking practices.

7. In August 2021, the Commission adopted a *Further Notice of Proposed Rulemaking (FNPRM),* 86 FR 51081, seeking comment on how to improve the interconnected VoIP direct access application process to address the identified gaps in the direct access application process, the continued scourge of illegal robocalls, national security, and number resource exhaust. We received comments from a wide range of stakeholders, including state public utility commissions, interconnected VoIP providers, industry standards groups and trade associations, and consumer advocates.

Discussion

8. The application process for interconnected VoIP providers' direct access to numbering is the first line of defense in mitigating the risk of providing scarce numbering resources to bad actors. It is thus critically important that the rules governing this process prevent, to the greatest extent possible, interconnected VoIP providers that engage in unlawful robocalling or spoofing, or otherwise threaten the national security and law enforcement interests of the United States, from accessing or retaining our Nation's numbering resources. While our direct access rules currently contemplate that the Bureau may request supplemental information as necessary to conduct a thorough public interest review, the rule changes we adopt in this document make certain previously supplemental showings a mandatory prerequisite before the Bureau accepts new applications for filing and grants such applications in the public interest. The rules we adopt in this document strike an appropriate balance between establishing necessary checks on interconnected VoIP direct access applicants and authorization holders and fostering an efficient direct access process that has, in part, facilitated the ongoing technological transition to advanced IP communications networks.

Ensuring That Authorization Approvals Serve the Public Interest

9. First, we tighten our application requirements to ensure that the Bureau receives sufficient detail from interconnected VoIP applicants to make informed, public-interest-driven decisions about their direct access applications and thereby protect the public from bad actors. These new requirements will also increase our enforcement capabilities should we find that providers are skirting our rules. Upon the effective date of these rules, we require explicit acknowledgment of compliance with all robocall regulations; implement disclosure and update requirements regarding ownership and control; require certification of compliance with other applicable Commission regulations and certain state law; and add a declaration requirement to hold applicants accountable for the truthfulness and accuracy of their direct access applications.

Certifying Compliance With Robocall-Related Rules

10. We adopt our proposal to require a direct access applicant to certify that it will use numbering resources lawfully and will not encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud. Protecting Americans from the harmful effects of unwanted and illegal robocalls remains the Commission's top consumer protection priority. More than just a nuisance, illegal robocalls continue to expose millions of American consumers to harmful risks. The Commission has estimated that $10.5 billion is lost annually by consumers due to illegal robocalls, not accounting for the non-quantifiable losses suffered by consumers and the erosion of confidence in the Nation's telephone network. The Commission has also found that the potential benefits resulting from eliminating the wasted time and nuisances caused by illegal scam robocalls would exceed $3 billion annually. The Commission receives more complaints about such unwanted calls than about anything else—approximately 119,000 last year alone. The Commission received approximately 193,000 such complaints in 2019, 157,000 in 2020, 164,000 in 2021, and 119,000 in 2022.

11. To help curb illegal robocalls and enhance the Bureau staff's ability to protect the public interest from such calls, the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), proposed requiring applicants to certify in their direct access applications to numerous statements regarding illegal robocalls and the Robocall Mitigation Database and to disclose whether they are subject to a robocall-related action, investigation, or inquiry from various enforcement entities. We proposed requiring applicants for direct access to certify that they: (1) will use numbering resources lawfully; (2) will not encourage nor assist and facilitate illegal robocalls, illegal spoofing, or fraud; (3) will take reasonable steps to cease origination, termination, and/or transmission of illegal robocalls once discovered; (4) will cooperate with the Commission, Federal, and state law enforcement and regulatory agencies with relevant jurisdiction, and the industry-led registered consortium, regarding efforts to mitigate illegal or harmful robocalling or spoofing and tracebacks; (5) have filed in the Robocall Mitigation Database; (6) have either (A) fully implemented the STIR/SHAKEN caller ID authentication protocols and framework or (B) have implemented either STIR/SHAKEN caller ID authentication or a robocall mitigation program for all calls for which it acts as a voice service provider, and if the latter, have described in the Database the detailed steps they are taking regarding number use that can reasonably be expected to reduce the origination and transmission of illegal robocalls. We also proposed requiring direct access applicants or authorization holders to inform the Commission if they are subject to a Commission, law enforcement, or regulatory action, investigation, or inquiry due to their robocall mitigation plan being deemed insufficient or problematic, or due to suspected unlawful robocalling or spoofing, and to acknowledge this requirement in their applications. We received substantial opposition from a wide range of commenters in response to these proposals. Many commenters argued that our proposed approach would risk creating redundancies and cause confusion because interconnected VoIP providers are already subject to the Commission's comprehensive framework to combat illegal robocalls. Some commenters also argued that our proposals would not effectively reduce the origination of illegal robocalls, or would impact interconnected VoIP providers' competitiveness with other types of providers by imposing on them unique burdens. Upon consideration of the record, we adopt a more straightforward approach that avoids these concerns and instead cross-references the relevant Commission rules targeting illegal robocalls in our new certifications.

12. *Robocall-related certifications.* We revise § 52.15(g)(3) of the Commission's rules to require an interconnected VoIP provider seeking direct access to numbering resources to certify that: the applicant will not use the numbers obtained pursuant to an interconnected VoIP provider numbering authorization to knowingly transmit, encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud, in violation of robocall, spoofing, and deceptive telemarketing obligations under 47 CFR 64.1200, 64.1604, and 64.6300 through 64.6308 and 16 CFR 310.3(b) [As voice service providers, interconnected VoIP providers must comply with all regulations that target illegal robocalls that are generally applicable to all voice service providers. Additionally, interconnected VoIP providers acting as terminating, originating, intermediate, and/or gateway providers must accordingly also comply with the specific regulations targeting illegal robocalls that are applicable to each type of provider. Some commenters propose additional changes to the robocalling rules that are not necessarily tied to direct access to numbers or limited to interconnected VoIP providers. We decline to adopt or address these proposals, as they are beyond the scope of this proceeding]; the applicant has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements and filed a certification in the Robocall Mitigation Database as required by 47 CFR 64.6301 through 64.6305 [Accordingly, should the Commission deem the applicant's filing insufficient and remove it from the Robocall Mitigation Database, the applicant may not validly certify to this statement. As noted above, we proposed requiring interconnected VoIP providers to certify that they will cooperate with various governmental agencies and the industry-led registered consortium regarding efforts to mitigate illegal or harmful robocalling or spoofing and tracebacks. In our recent *Caller ID Authentication Sixth Report and Order,* 88 FR 29035 (May 5, 2023), we expanded the scope of a similar Robocall Mitigation Database certification requirement to cover all providers. We thus decline to adopt our proposal here to avoid imposing redundant requirements]; and neither the applicant nor any of its key personnel identified in the application are or have been subject to a Commission, law enforcement, or any regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission's rules applicable to unlawful robocalls or unlawful spoofing. Our rules already require interconnected VoIP direct access applicants to certify that none of the key personnel identified in their applications are or have been subject to a Commission, law enforcement, or regulatory agency investigation for failure to comply with *any* law, rule, or order. By adding the language regarding the Commission's rules applicable to unlawful robocalls or unlawful spoofing to the end of the provision, we do not narrow the broader scope of the certification, as VON suggests, but rather place additional emphasis on the need for applicants to disclose robocalling compliance issues to the Commission. Additionally, we note that this certification is consistent with the reporting requirements recently adopted by the Commission for all providers to certify as to whether they have been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or

suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing. We decline at this time to adopt our proposal to expand the sphere of proceedings (*i.e.,* to include ''actions'' and ''inquiries'' in addition to investigations) covered by this certification, as we agree with RingCentral that the proposal was vaguely worded and therefore did not ''provide[ ] sufficient notice to enable providers to comply.'' Additionally, we emphasize that being subject to an investigation would not necessarily disqualify an applicant from receiving direct access authority. In the event an applicant is not able to certify that it is not subject to a Commission, law enforcement, or regulatory agency investigation, an applicant can explain in its application why the investigation should not disqualify the applicant from receiving direct access authorization. For example, an applicant could provide information rebutting a warning letter (*e.g.,* a cease-and-desist letter) of suspected illegal robocalling received from the Commission or Federal Trade Commission (FTC) and/or a description of the steps the applicant has taken to respond to such a letter.

13. The additional certifications we adopt in this document strike a balance between acknowledging interconnected VoIP providers' disproportionate role in the facilitation of illegal robocalls, and ensuring that our approach is minimally burdensome and competitively neutral. This approach accords with our recent decision in the *Caller ID Authentication Sixth Report and Order,* 88 FR 29035 (May 5, 2023), not to adopt heightened robocall mitigation standards for interconnected VoIP providers. Consistent with the record here, we do not adopt new obligations regarding STIR/SHAKEN caller ID authentication or robocall mitigation specifically for interconnected VoIP providers, but instead merely require those providers to certify that they will comply, or have complied, with certain preexisting requirements. By requiring applicants to certify compliance with preexisting rule sections, we ensure that our approach does not cause confusion, and remains accurate should we decide to revise the robocall-related obligations applicable to voice service providers in the Call Authentication Trust Anchor or other robocall-related dockets. These certifications are not redundant and serve an important proactive educational function—alerting interconnected VoIP providers at the outset of the direct access application process of important obligations, thereby helping to ensure robust compliance and foster a more trustful numbering ecosystem. As explained below, the certifications carry the weight of the Commission's requirement that an officer or responsible official of the company attests under penalty of perjury, pursuant to § 1.16 of the Commission's rules, that all statements in the application are true and accurate. These certifications will thus serve the public interest by further deterring direct access applicants from engaging in unlawful robocalling or spoofing, and by giving the Commission another enforcement mechanism to use against bad actors. Our requirement that applicants certify that they are not subject to an investigation, including a robocall-related investigation, paired with our preexisting rule that authorization holders must maintain the accuracy of their certifications, will keep us informed of such investigations as they arise. The Commission publishes an up-to-date list of robocall-related cease-and-desist letters that it has sent to voice service providers. Due to the persistence of robocalls and associated complaints nationwide, we unsurprisingly received broad support for adding robocall-specific certifications to direct access applications from governmental entities. RingCentral additionally supports our approach of strengthening our enforcement of already existing requirements.

14. Some commenters contend that these new certifications could incentivize interconnected VoIP providers to obtain numbers from the secondary market, rather than by applying for direct access. This, they posit, would be a negative outcome because direct access to numbers facilitates traceback requests and gives regulators better visibility into number utilization. While we agree with commenters regarding the benefits of direct access, we disagree that our new certifications will push interconnected VoIP providers into the secondary market. The additional certifications we adopt in this document are minimally burdensome as they do not add any new substantive obligations, and are only incremental to the existing certifications required by the Commission's rules. We are therefore confident that the incremental cost of filing such certifications will not materially impact an interconnected VoIP provider's decision regarding numbering resource acquisition. We note the other issues raised by TelSwitch are outside the scope of this proceeding.

15. *Notification of investigations post-grant.* In the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we proposed requiring direct access authorization holders to inform the Commission if the authorization holder is subject—either at the time of its application or after its filing or its grant—to a Commission, law enforcement, or regulatory agency action, investigation, or inquiry due to its robocall mitigation plan being deemed insufficient or problematic, or due to suspected unlawful robocalling or spoofing. We decline to adopt our proposal at this time. Because we adopt a new certification in this regard (as explained above), and because the Commission's rules already contain a requirement that an authorization holder ''[m]aintain the accuracy of all . . . certifications in its application,'' and ''file a correction with the Commission . . . within thirty (30) days'' of any changes, adopting this proposal is unnecessary. By taking this approach, we address RingCentral's concern regarding adding a potentially confusing additional layer of reporting requirements beyond what is already required by the current rule. We are satisfied that our current requirement to keep all certifications up-to-date will capture our new robocall-related certifications, and will keep us apprised of any new investigations involving interconnected VoIP direct access authorization holders.

Enhanced Disclosure and Review of Ownership and Control of Applicants

16. We adopt rules to require the disclosure and review of foreign ownership and control of interconnected VoIP direct access applicants. The Commission has recognized that ''[i]llegal robocalling often originates from sources outside the United States,'' and ''[t]he Commission and Congress have long acknowledged that illegal robocalls that originate abroad are a significant part of the robocall problem.'' Indeed, in 2020, the North American Numbering Council (NANC), the Commission's advisory committee of outside experts on telephone numbering matters, stated that ''it is a long-standing problem that international gateway traffic is a significant source of fraudulent traffic.'' The Commission accordingly strives to stay abreast of foreign companies using U.S. telephone numbers. For example, it has stressed that ''[e]nsuring that foreign voice service providers using U.S. telephone numbers comply with the certification requirements prior to being listed in the database is especially important in light of the prevalence of foreign-originated illegal robocalls aimed at U.S. consumers and the

difficulty in eliminating such calls.'' Foreign ownership of providers serving our Nation's consumers also is a matter of concern for the Commission generally, as it may pose national security and/or law enforcement risks to the United States. VoIP providers require particular scrutiny in the robocall area as well, given that ''[t]he rising tide of robocalls and the emergence of VoIP go hand in hand.'' In fact, ''[t]oday, widely available VoIP software can allow bad actors with malicious intent to make spoofed calls with minimal technical experience and cost.'' As a result, ''[a]llowing [VoIP providers with foreign ownership or control] direct access to numbers and critical numbering databases raises a number of potential risks, including the impact to number conservation requirements; questions related to jurisdiction, oversight, and enforcement of numbering rules; consideration of assessment of taxes and fees upon foreign-owned entities; and potential national security and law enforcement risks with access to U.S. telecommunications network operations.'' These factors make it important for the Commission to know about foreign ownership of interconnected VoIP providers seeking direct access to our Nation's finite numbering resources, especially because a number of providers with substantial foreign ownership have applied to obtain direct access to numbering resources since the 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015).

17. The current rules on direct access applications, however, do not require interconnected VoIP providers to disclose any information about their ownership or affiliation, nor do they specify a process to evaluate applications with substantial foreign ownership. The *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), therefore proposed requirements aimed at ascertaining the foreign ownership and control of interconnected VoIP applicants and tentatively concluded that applicants should disclose any 10% or greater ''equity and/or voting interest, or a controlling interest.'' It also proposed requiring such applicants to identify any interlocking directorates with a foreign carrier, as well as any affiliation with a foreign carrier. As discussed below, we now adopt ownership disclosure requirements for interconnected VoIP direct access applicants, and relatedly conclude that applications from such providers will be placed on a ''non-streamlined'' processing track if the applicant has a foreign owner whose interest exceeds the reporting threshold set forth in § 63.18(h) of the Commission's rules, which we incorporate for purposes of ownership reporting here.

18. *Ownership disclosure requirements.* We adopt a rule to require interconnected VoIP applicants for a Commission direct access authorization to provide all of the information, disclosures, and certifications required by § 63.18(h) and (i) of the Commission's rules. If the applicant does not have information required to be provided under § 63.18(h) and (i), the application must include a statement to that effect. This approach ensures the requirements for interconnected VoIP direct access applicants match the requirements for international section 214 applications, as well as applications for submarine cable landing licenses (which likewise cross-reference § 63.18(h)). It also ensures the requirements for interconnected VoIP direct access applicants will remain consistent with the requirements for international section 214 applicants regardless of any modifications to § 63.18(h) or (i). For example, the Commission adopted changes to § 63.18(h) in 2020. The amendments to § 63.18(h), however, are not yet effective. The Commission also has a pending rulemaking proceeding seeking comment, among other things, on whether to adopt a new ownership reporting threshold that would require disclosure of certain 5% percent or greater direct and indirect equity and/or voting interests with respect to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority, and on whether to apply the 5% reporting threshold to encompass all equity and voting interests, regardless of whether the interest holder is a domestic or foreign individual or entity. In that proceeding, the Commission stated, ''[t]he current 10% reporting threshold may not capture all foreign interests that may present national security, law enforcement, foreign policy, and/or trade policy concerns.'' If the Commission amends § 63.18(h) by adopting a 5% reporting threshold, we direct the Bureau to seek comment on whether applicants for a direct access authorization should disclose information, including the name, address, citizenship, and principal business, of any individual or entity that directly or indirectly owns 5% percent or greater equity and/or voting interests, or a controlling interest, of the applicant. Based upon the Bureau's review of the comments, we further delegate to the Bureau the authority to address any such final threshold requirement in a public notice. We find that adopting a reporting threshold consistent with that used in other Commission application processing regimes promotes certainty and transparency. This approach also ensures there is no undue burden on direct access applicants, since many companies already provide the same or similar information to the Commission in other contexts.

19. Adopting the same standards that will be used for international section 214 applications, [Note that applicants seeking assignment or transfer of control of an international section 214 authorization are also subject to the ownership-disclosure requirement in § 63.18(h) pursuant to § 63.24.] in particular, is appropriate given our focus on national security and law enforcement concerns and reducing risks of illegal robocalling facilitated by potential bad actors abroad. Requiring ownership information, from a U.S.- or foreign-owned applicant, will assist Bureau staff in their existing practice of identifying applications that require further review to determine whether the direct access applicant's ownership, control, or affiliation raises national security and/or law enforcement concerns. Indeed, ''[i]t is axiomatic that the Commission needs accurate information in order to carry out its work, and this is especially true with regard to compliance with foreign ownership disclosures. In several recent cases the Commission has found that foreign ownership of telecommunications companies providing services in the United States may pose a risk to national security, law enforcement interests, or the safety of U.S. persons.'' As noted above, several providers with substantial foreign ownership have applied to obtain direct access to numbering resources since adoption of the 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), making the initial review process especially important to address the risk of providing access to our numbering resources to potential bad actors abroad. This requirement also will cause applicants to conduct robust due diligence, thus increasing the reliability of their information.

20. The record largely supports instituting some form of ownership disclosure for direct access applicants. We decline to adopt a higher threshold because, as we recognized in the international section 214 context, ''although a 10-percent threshold is somewhat more burdensome [than a

higher threshold], that increased burden does not outweigh the potential value to the Commission of being able to review the additional information about the applicant's ownership. Leaving the threshold at 10% or greater will help us determine whether a particular application raises issues of national security, foreign policy, or law enforcement risks.'' VON and Microsoft, however, argue that a foreign ownership reporting requirement ''will add unnecessary time and expense to the review process without any obvious purpose or anticipated reduction in illegal robocalls.'' While we recognize that an ownership disclosure requirement constitutes an additional step in the direct access application process for interconnected VoIP providers, we conclude that the public interest in receiving this information outweighs any incremental cost on applicants. Interconnected VoIP providers that seek access to telephone numbers on a permanent basis acquire both the rights and obligations associated with using that access in the public interest, and we must ensure that access does not result in illegal practices that harm consumers. As noted above, the ownership disclosures we adopt are like those required in several other Commission application processes, so requiring the same kind of disclosure here is not unduly onerous. Twilio argues that applicants for growth numbering resources should not have to disclose ownership information in those applications because they would already have been granted access to numbers. We are not revising the rules on applications for growth numbering resources in 47 CFR 52.15(g)(4). We do, however, address below the duty to update ownership disclosures when the relevant information changes. Moreover, an applicant that is a privately held entity should know its investors and maintain records of their significant direct or indirect equity and/or voting interest holders in the ordinary course of business. An applicant that is a publicly held company is also required to identify its interest holders in requisite filings with the U.S. Securities and Exchange Commission (SEC). As in other contexts requiring the same kind of ownership disclosure, the relatively minor burden of disclosing ownership information in a direct access application is outweighed by the public interest benefit of the Commission having the information when the application is filed, in time to address potential issues raised by foreign ownership before granting an applicant rights or privileges.

21. *Non-streamlined pleading cycle for direct access applicants with reportable foreign ownership.* As proposed in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we amend our rules to state that the Bureau will remove applications from streamlined processing whenever the applicant has reportable foreign ownership, meaning ownership or control by a foreign entity that meets or exceeds the threshold for disclosure under § 63.18(h) of the Commission's rules, as now incorporated in § 52.15(g)(3). The rule formalizes the current practice of taking applications with substantial foreign ownership off the streamlined processing cycle.

22. Allowing sufficient time for review of applications with reportable foreign ownership will help the Bureau identify and assess potential national security and law enforcement risks raised by such applications, and provide transparency to applicants regarding the timeframe for processing their applications. Twilio supported this proposal, and no commenter opposed it.

23. *Referral of applications with reportable foreign ownership to Executive Branch agencies.* We decline to automatically refer to the Executive Branch agencies interconnected VoIP providers' direct access applications that have reportable foreign ownership or control. There was a lack of strong record support for automatic referrals. Moreover, given the limited number of referrals to date, it is more prudent and efficient to continue the current practice under § 1.40001(a) of the rules, where the Commission, in its discretion, makes case-by-case referrals of direct access applications if it finds that ''the specific circumstances of an application require the input of the Executive Branch as part of [the Commission's] public interest determination of whether an application raises national security, law enforcement, foreign policy, and/or trade policy concerns.''

24. *Development of standard questions.* We also decline to develop a list of ''Standard Questions'' for interconnected VoIP applicants with reportable foreign ownership or control. While the Commission has adopted ''a standardized set of national security and law enforcement questions (Standard Questions) that certain applicants and petitioners . . . with reportable foreign ownership will be required to answer as part of the Executive Branch review process,'' there was no strong record support for developing such questions for all interconnected VoIP direct access applicants with reportable foreign ownership. Given the lack of a developed record and our decision not to automatically refer applications to the Executive Branch agencies when an interconnected VoIP provider has reportable foreign ownership, we find it appropriate to rely on the current practice, under which Commission staff and the Executive Branch agencies can request additional information from applicants on a case-by-case basis.

25. *Duty to update ownership information.* To ensure ownership information remains up to date, we revise § 52.15(g)(3) to require interconnected VoIP providers that obtain direct access authorization under the revised rules to submit an update to the Commission and each applicable state (*i.e.,* each state where the provider has acquired or applied to receive numbers from the state at the time of the ownership change) within 30 days of any change to the reportable ownership information disclosed in their direct access applications, or if a provider that previously did not have reportable ownership information comes to have reportable foreign ownership information. For example, if a provider had no reportable ownership information at the time of its application but a person or entity later came to possess more than 10% of the equity in the provider, the provider would have to report the change. If a provider had reportable ownership information at the time of its application but the ownership changes (*e.g.,* a holder of 10% of the equity came to hold 50%), the provider would have to report than change. But if there is a change in ownership that does not reach the reportable level (*e.g.,* a holder of two percent of the equity came to hold six percent), no update would have to be filed. Alternatively, if the provider that obtained direct access authorization under our revised rules did not have reportable ownership percentages and information (whether on domestic or foreign owners) at the time of its original application, but subsequently has reportable information, we require it to provide the information as an update to its authorization within a 30-day timeframe. We also delegate authority to the Bureau to direct the Numbering Administrator to suspend number requests if the Bureau determines, based on updated information, that further review of the direct access authorization is necessary.

26. This requirement builds upon the current rules, which require each interconnected VoIP provider with direct access to numbering resources to maintain the accuracy of all the contact information and certifications submitted in its application, and to file a correction with the Commission and

each applicable state within 30 days of any change to the contact information or certifications. Going forward, obtaining such updates regarding changes to ownership information will help us ensure that direct access authorization holders' ownership does not change post-authorization in a manner contrary to the public interest, such as introducing a potential bad actor-owner that facilitates illegal robocalling, poses a threat to the national security and law enforcement interests of the United States, or otherwise engages in conduct detrimental to the public interest. Under the current rules, bad actors could surreptitiously strengthen their influence on authorization holders by increasing their ownership after the Commission grants the initial authorization, thereby evading Commission oversight and undermining enforcement efforts if that change in ownership levels did not have to be reported. By requiring all ownership information to be updated within 30 days of a change, potential bad actors can no longer remain hidden from view. In fact, such information can be used to determine whether a change in authorization is warranted (*e.g.,* making the authorization be conditioned on a mitigation agreement, or even revoking the authorization).

27. The National Association of Attorneys General supports requiring interconnected VoIP authorization grantees to update their ownership information after a change. Some commenters oppose it, however, arguing that such a requirement would be onerous and unnecessary, especially with regard to information that has no bearing on the Commission's objective to prevent foreign bad actors from gaining direct access to U.S. numbers, and is not competitively neutral because non-VoIP providers would not have to provide it. Twilio also questions whether the 30-day deadline is truly necessary to advance the Commission's objectives, rather than an annual or biennial update.

28. We reject these arguments because we believe the public interest benefit of a requirement to keep all ownership data up to date within 30 days of a change outweighs the minimal burden on grantees. As stated in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), ''obtaining such updates will help us to ensure that the ownership [of grantees] does not change post-authorization in a manner that evades the purpose of application review.'' No commenter proposed a ''materiality threshold'' to determine when ownership data updates must be filed, and we therefore decline to adopt one. Absent an update requirement, applicants could skirt the more extensive review that applies to applications with reportable foreign ownership simply by delaying the investment by a foreign entity. This could even occur unintentionally as the result of an unexpected investment or buyout by a foreign entity. In either case, the update requirement helps ensure authorization holders with reportable foreign ownership receive an appropriate level of scrutiny in light of their changed ownership, so the Commission could consider, for example, whether the provider should enter a robocall mitigation agreement. We also conclude that requiring updates within 30 days, rather than annually or biennially, is a better way to ensure the Commission has current information, and that providing updated ownership information is relevant to our efforts to eliminate illegal robocalls for all the reasons stated above regarding providing foreign ownership data in applications. Finally, while non-VoIP direct access applicants are not covered by this new rule, we do not believe the burden on interconnected VoIP providers is so large as to affect competition, and in any event do not foreclose imposing this same duty on non-VoIP applicants in the future.

29. *Filing procedure.* We require all updated or corrected ownership information to be filed in the Electronic Comment Filing System (ECFS) through the Direct Access intake docket (Inbox 52.15) and via email to *DAA@fcc.gov,* unless the Bureau specifies another method. We note that the Bureau may request additional documentation as necessary.

30. *State submission requirement.* Interconnected VoIP providers obtaining direct access authorization under the revised rules we issue in this document also are required to submit updated or corrected ownership information to the states from which the authorization holder has acquired or requested numbers at the time of the ownership change. Such information should be submitted to states in the same manner the providers would submit a correction or update to their original applications.

31. *Executive Branch agencies' review of corrected information.* As proposed in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we also delegate authority to the Bureau to direct the Numbering Administrator, pursuant to its applicable procedures, to suspend all pending and future requests for numbers if the updated or corrected ownership information submitted by an authorization holder indicates a material change or discloses new information such that additional investigation is necessary to confirm that the authorization still serves the public interest. In the foreign ownership context, if updated or corrected ownership information leads the Commission to refer the authorization holder to the Executive Branch agencies, the Bureau shall also direct the Numbering Administrator to suspend all pending and future requests for numbers until such review is complete and a determination is made by the Bureau.

32. *Use of numbers after submission of updated or new information.* Finally, we note that authorization holders may continue to use numbers they obtained prior to submitting updated or corrected ownership information to the Bureau unless the Bureau determines that the authorization must be revoked per the formal revocation procedure we adopt below.

Certifying Compliance With Other Commission Rules

33. Under our current rules, interconnected VoIP providers seeking to obtain numbers must comply with various obligations that are designed to enhance public safety, prevent access stimulation and intercarrier compensation abuse, ensure that Commission broadband maps are accurate, and ensure that providers actually provide the service they describe. As we do in the robocall context above, we increase our enforcement capabilities and strengthen those rules by requiring interconnected VoIP providers to make certifications regarding their compliance with those rules in their direct access applications.

34. *Public safety certification.* Consistent with our proposal in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we revise § 52.15(g)(3) of the Commission's rules to require interconnected VoIP applicants for direct access authorization to certify that they comply with the Communications Assistance with Law Enforcement Act (CALEA). We also require applicants to provide evidence in their application that demonstrates their compliance with the Commission's part 9 public safety rules and CALEA. To preserve flexibility and minimize burdens, we decline to prescribe precisely what evidence should be submitted to satisfy this requirement. We note that technical specifications and call-flow diagrams ''have been helpful to Commission staff in assessing direct access applicants' compliance with 911 service and CALEA requirements in some cases.'' Evidence of 911 service agreements may

also be helpful to the Bureau's review. We additionally delegate to Bureau or other Commission staff the right to request additional documentation from the applicant to demonstrate compliance with these public safety obligations, where necessary.

35. As with the other certifications we adopt in this document, this new certification requirement will provide the Commission with additional enforcement abilities should the Bureau find that an authorization holder does not in fact comply with our public safety rules or CALEA. Our requirement to provide evidence of compliance with these obligations merely formalizes the preexisting Bureau practice of requesting such evidence after an application's submission. By requiring this evidentiary showing at the outset, we promote efficiency by ensuring Bureau staff have the relevant documentation when they begin their application review. Additionally, because the ability to provide public safety answering points (PSAPs) with caller location and call-back numbers necessitates two-way interconnection with the public switched telephone network (PSTN), this requirement will help Bureau staff assess whether an applicant actually provides interconnected VoIP service.

36. Several parties support this measure. The Maine Public Utilities Commission suggests that we should additionally require providers to submit the 911-related documentation to state regulatory and public safety agencies. Additionally, Lumen and USTelecom argue that this documentation submission requirement would be unduly burdensome if applied retroactively to existing authorization holders. We understand these concerns and decline to make this requirement retroactive at this time. We decline to take this approach because state regulatory agencies vary widely in terms of their jurisdiction over interconnected VoIP providers. While some states treat interconnected VoIP providers like communications service providers for specified purposes, others have statutes expressly limiting or removing their jurisdiction over interconnected VoIP providers altogether. A general requirement to send such documentation to state regulatory agencies would not be tailored appropriately to ensure only those agencies that have an interest in that information would receive it. Tailoring such a requirement to apply only to those states with jurisdiction over interconnected VoIP providers is also undesirable because it would create regulatory asymmetry that is not competitively neutral. We address additional state-related issues in Part III.A.4 below.

37. *Access Stimulation certification.* The *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), sought comment on possible changes to our direct access authorization rules to help combat Access Stimulation and other forms of intercarrier compensation arbitrage. In April of this year, we adopted a Second Report and Order, 88 FR 35743 (June 1, 2023) (*Access Arbitrage Second Report and Order*), in the Access Arbitrage docket which closed perceived loopholes in our Access Stimulation rules that some entities, including interconnected VoIP providers, were exploiting to the detriment of interexchange carriers (IXCs) and their end-user customers. Given the revisions to our Access Stimulation rules adding new requirements for internet Protocol Enabled Service (IPES) Providers—which include interconnected VoIP providers—we adopt a new certification that cross-references those new rules to help ensure applicants for direct access to numbers are aware of, and comply with them. We thus revise § 52.15(g)(3) of the Commission's rules to require interconnected VoIP providers applying for direct access to numbers to certify that they comply with our Access Stimulation rules found in 47 CFR 51.914.

38. We adopt this requirement to help alleviate concerns that direct access authorization will be used to evade our Access Stimulation rules when the applicant is directly or indirectly related to an entity suspected of being an access stimulator. In our recent *Access Arbitrage Second Report and Order,* 88 FR 35743 (June 1, 2023), we noted that, ''[d]espite multiple orders and investigations making clear the Commission will not tolerate access arbitrage, some providers continue to manipulate their call traffic or call flows in attempts to evade our rules. Recently, [local exchange carriers (LECs)] have inserted [IPES] Providers into call paths as part of an ongoing effort to evade our rules and to continue to engage in access stimulation. After inserting an IPES Provider into the call flow, the LEC then claims that it is not engaged in access stimulation as currently defined in our rules.'' This requirement will provide an additional enforcement mechanism if it is violated, including the potential for revocation of the provider's direct access authorization. As with the other certifications we adopt in this document, we expect the threat of enforcement action related to a false certification to deter applications by those that would violate our rules, including those related to Access Stimulation.

39. Commenters in both the Direct Access and our Access Arbitrage dockets have expressed support for this type of certification requirement as a means to deter interconnected VoIP providers from engaging in schemes to avoid the Access Stimulation rules. Verizon, for example, stated that ''IPES providers with direct access should acknowledge and affirmatively agree to observe the Commission's access stimulation rules. Access stimulating IPES providers would face consequences for making false certifications to the Commission.'' AT&T agreed with Verizon, stating that ''[s]uch a requirement will give the Commission an additional arrow in its quiver in the fight against harmful arbitrage schemes and should not place an undue administrative burden on IPES providers.'' We believe that these benefits Verizon and AT&T raise outweigh the concerns from some commenters that certifications that require interconnected VoIP providers to state their compliance with existing rules are duplicative or unnecessary.

40. We decline to adopt additional requirements beyond the certification at this time, as our newly adopted Access Stimulation rules are designed to help address the issues that commenters have noted in this docket. Should we find that more action is necessary to restrict interconnected VoIP providers' engagement in Access Stimulation schemes, we reserve the ability to revisit our conclusion here. We also agree with CCA that many of the suggestions we received in the record ''go well beyond the scope of the *Further Notice,* [and] are not specifically related to interconnected VoIP providers directly obtaining telephone numbers.''

41. *FCC Form 477 and 499 filings.* Under our rules, interconnected VoIP providers that have qualifying subscribers must file FCC Forms 477 and 499. Interconnected VoIP providers that have one or more revenue-generating end-user customers must file FCC Form 477, a semiannual reporting obligation that, for interconnected VoIP providers, collects data regarding (1) the number of service subscriptions sold to their own end-user customers by census tract and, for each census tract, shall provide the number of subscriptions provided under consumer service plans; and (2) the service characteristics for its subscriptions in each state. As proposed in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we revise § 52.15(g)(3) of the Commission's rules to require interconnected VoIP providers that must file FCC Forms 477

and 499 to provide evidence that they have complied with these obligations, and any successor filing obligations, when filing a direct access application. Should providers not have evidence of filing these forms, their certification should explain the reasons why. The 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), noted that during the procedural review of direct access applications, Bureau staff routinely verify that both FCC Forms 477 and 499 have been filed, if applicable. For providers that do not have eligible subscribers at the time of filing their direct access applications, we expect but do not require such providers to submit evidence of their submissions when they become obligated to do so under our rules. Our new rule formalizes this inquiry into an application requirement which, again, promotes efficiency and adds another layer of enforcement capability. We note that submission of FCC Forms 477 and 499 filing receipts would constitute *prima facie* evidence of compliance with these rules. The FCC Form 477 filing system will no longer be used to collect new FCC Form 477 submissions, and will remain open only for filers to make corrections to existing FCC Form 477 filings for data as of June 30, 2022 and earlier. We also note that, beginning with data as of December 31, 2022, providers, including interconnected VoIP providers, are required to submit the following data using the Broadband Data Collection (BDC) filing system: fixed and mobile broadband and voice FCC Form 477 subscription data, fixed and mobile BDC broadband availability data, BDC mobile voice availability data.

Compliance With State Laws

42. The 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), and current rules require an interconnected VoIP provider to acknowledge a duty to comply with state guidelines and procedures adopted under the numbering authority the Commission has delegated to the states. In the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), the Commission asked whether to revise this rule to state that interconnected VoIP providers holding a numbering authorization must comply with state numbering requirements and other applicable requirements for businesses operating in the state. Having considered the record, we now revise § 52.15(g)(3) to make clear that interconnected VoIP applicants and authorization holders that request numbering resources from the Numbering Administrator for a particular state must acknowledge that their direct access authorization is subject to compliance with both state numbering requirements and to the laws, regulations, and registration requirements applicable to them as businesses operating in that state, not merely state requirements specifically issued under Commission delegated numbering authority. Upon the effective date of these new rules, direct access applicants must expressly acknowledge in their applications that they will comply with such laws.

43. One of the original purposes of the requirement to comply with state delegated numbering authority law was to promote competitive neutrality by requiring interconnected VoIP providers with direct access to numbering resources to be subject to the same numbering requirements as carriers getting numbers for that state. Unfortunately, it appears some interconnected VoIP providers have assumed they have no duty to abide by other state requirements because § 52.15(g)(3)(i)(B) focuses solely on delegated numbering authority. That is not the Commission's intent and is inconsistent with the goal of competitive neutrality. The revision we adopt in this document addresses this unintended consequence and helps keep interconnected VoIP providers on a more equal footing with local exchange carriers (LECs) (which must comply with state general registration requirements pursuant to their certificates of public convenience and necessity and status as businesses operating in the states). It will directly help avoid confusion over the duty to comply with applicable state laws beyond delegated numbering matters. Equally important, it will discourage interconnected VoIP direct access authorization holders from requesting numbering resources for states where they do not serve end-user customers, a practice that contributes to the exhaust of numbering resources in that state. By clarifying that VoIP direct access authorization holders must also comply with other applicable state laws, such as registration requirements, the new requirement will make it more difficult for interconnected VoIP providers to evade measures that enable states to generally address other consumer-protection issues, including unlawful robocalling. For example, state commissions assert that requiring interconnected VoIP direct access authorization holders to comply with state law through their registration requirements will ensure that state authorities have the information needed to identify providers involved in unlawful robocalling.

44. Several state commissions support this requirement. They observe there has been confusion, or at least disagreement, about the extent to which interconnected VoIP providers with direct access to numbering resources must comply with general state-law duties applicable to other businesses obtaining numbers in the states, such as LECs. In Maine, for example, voice service providers must register with the Maine Public Utilities Commission's (PUC) third-party administrator for the Maine Universal Service Fund and the Maine Telecommunications Education Access Fund. The Maine PUC staff, however, has found it does not always have the information it needs to determine whether interconnected VoIP providers doing business in Maine are contributing to these funds, which it says is required by state law. Other state commissions note similar issues.

45. In light of this record evidence, we disagree with commenters who say there has been no confusion about the scope of the duty to comply with state law or that this revised rule amounts to a new delegation of numbering authority to the states. Our revised rule in this document concerns state laws, regulations and registration requirements applicable to them as businesses operating in a given state, separate from any Commission delegation of numbering authority. We are not delegating any new numbering authority to the states here. Rather, the purpose is to make plain that direct access applicants must acknowledge that their authorization is contingent on complying not only with state requirements issued under delegated numbering authority, but also with other independently applicable state obligations, such as registration requirements, that would apply to them as businesses operating in the state.

46. We also disagree with commenters who argue that requiring interconnected VoIP providers to acknowledge that their direct access authorization is subject to compliance with applicable state requirements would undermine the Commission's 2004 *Vonage Order* and its preemption of most state regulation of interconnected VoIP service. As explained in the *Vonage Order,* that decision ''express[ed] no opinion'' on the applicability to an interconnected VoIP provider of a state's ''general laws governing entities conducting business within the state, such as laws concerning taxation; fraud; general commercial dealings; and marketing, advertising, and other business practices.'' The Commission also stated in that order that ''as we move forward in establishing policy and

rules for . . . IP-enabled services, states will continue to play their vital role in protecting consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer inquiries and complaints.'' Accordingly, even after the *Vonage Order,* WC Docket No. 03–211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004), the Commission has permitted states to require interconnected VoIP providers to contribute to state universal service funds and pay state fees related to 911/E911 service. VON and Microsoft raised concerns that our revised rule could mistakenly be interpreted by state commissions as expanding the permissible scope of state regulation of interconnected VoIP services. To avoid any doubt, we clarify that, as stated in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), by adopting this revised rule we do not address the statutory classification of interconnected VoIP services as telecommunications or non-telecommunications services, nor do we address, expand or alter, the scope of states' authority to regulate interconnected VoIP service, as reflected in the *Vonage Order* and established Commission policy. In a separate preemption argument in this record, Terra Nova Telecom claims interconnected VoIP services compete with the Commercial Mobile Radio Service (CMRS) and that Congress has preempted state market entry or rate regulation of CMRS under section 332(c)(3) of the Communications Act of 1934, as amended. Terra Nova submits, therefore, that the Commission should not allow states to impose requirements on interconnected VoIP services that they could not impose on CMRS, such as the kinds of requirements the Louisiana PSC seeks to impose on Terra Nova before issuing it telephone numbers. But Terra Nova points to no authority stating that the scope of preemption is identical for interconnected VoIP services and CMRS, and section 332(c)(3) is specific to CMRS. Terra Nova also takes issue with several requirements it alleges the Louisiana PSC seeks to impose on it as a prerequisite to giving numbers to Terra Nova (which already was granted direct access authority by this Commission). Terra Nova contends that several of these requirements amount to market-entry or public utility-style regulation of the kind preempted by the *Vonage Order.* We lack adequate information to resolve this specific dispute in the context of this general rulemaking.

47. We also disagree with arguments that the revised rule is too vague because it does not specify the particular state requirements that could apply to interconnected VoIP providers with direct access to numbering resources. Any such list inevitably would risk being incomplete or quickly outdated. The point of our rule revision is to have applicants acknowledge their direct access authorization is subject to compliance with applicable laws, regulations, and registration requirements for businesses operating in the state(s) where the authorization holder seeks to obtain numbers. We note, moreover, that any interconnected VoIP provider obtaining numbering resources from a state pursuant to § 52.15(g)(3)(i)(C) presumably would already be evaluating its potential duties under state law (*e.g.,* registration with a secretary of state or tax authorities, possible obligations under state universal service funds or regarding 911 fees) to an extent that allows it to acknowledge whether it will comply with state law. Our new application requirement therefore should not impose any added burdens on interconnected VoIP applicants beyond their normal preparation to begin dealing with a state and possibly providing service there.

48. ''*Minimal contacts.*'' In order to help minimize numbering exhaust, the Commission asked whether it should adopt a ''minimal contacts'' requirement that interconnected VoIP providers would have to meet in order to obtain numbering resources in a given state. Having considered the record, we refer this issue to the NANC, as discussed below in Part III.C. The Commission has not explicitly prohibited the use of numbering resources requested for one state to serve customers in other states, whether the entity obtaining the numbers is a LEC or an interconnected VoIP provider holding a direct access authorization. We recognize that a LEC is more likely to have contacts with the state for which it has requested numbering resources, such as physical facilities, a CPCN, and a state registration. At this time, however, we do not have sufficient record evidence to fully assess this issue, and attempting to define ''minimal contacts'' for interconnected VoIP providers here would risk unintentionally imposing a new requirement that numbering resources requested for a particular state be used to serve at least some customers in that state. Absent such a new requirement, which is outside the scope of this proceeding, a ''minimal contacts'' requirement would put the Commission into the position of having to evaluate the specific contacts of any direct access authorized interconnected VoIP provider for each particular state in which it seeks numbers, which inevitably would be a complex, provider-specific inquiry, and one for which we lack helpful Commission precedent. The California PUC commented that if ''minimal contacts'' means having customers in the state and operating authority by the state, it would support a ''minimal contacts'' requirement. Other state public utility commissions supported instituting a ''minimal contacts'' requirement but did not offer any further detail regarding the standard.

49. *Nomadic interconnected VoIP providers.* The revised state-law acknowledgment requirement we adopt applies to all interconnected VoIP providers requesting numbering resources in a particular state, even if their services are non-fixed or nomadic and not directly linked to the state corresponding to the respective area code. The fact that some interconnected VoIP providers provision non-fixed (or nomadic) services does not alter the applicability of the state-law acknowledgment requirement. RingCentral contends that state requirements other than those issued under delegated numbering authority cannot apply to them because nomadic VoIP services ''are impossible to segregate into intrastate and interstate components'' and therefore are subject to ''exclusive federal jurisdiction.'' Non-fixed or nomadic interconnected VoIP service providers request numbering resources from states and therefore place burdens on each such state's numbering resources just as their fixed-VoIP counterparts do. It would also burden state commissions to determine the precise geographic locations of non-fixed providers each time a numbering request was received. State commissions strongly supported applying the state-law acknowledgment requirement to non-fixed and nomadic interconnected VoIP providers, and we agree with such a requirement.

50. *Directing the Numbering Administrator to deny applications.* We delegate authority to the Bureau to direct the Numbering Administrator to deny requests for numbering resources from an interconnected VoIP provider when the Commission is notified (*e.g.,* by a state commission) that the provider is not complying with independently applicable state legal requirements. It is important that there be some clear consequence of not complying with applicable state laws when obtaining numbering resources from a state based

on a Federal numbering authorization. Our actions here also are consistent with current practice, under which, when a state reports that a provider is not complying with state requirements, the Numbering Administrator may deny that provider's numbering requests. Although we believe that existing practices conform with § 52.15 of the Commission's rules, making the requirement explicit clarifies the process so as to leave no doubt as to these requirements.

Ensuring the Accuracy of Application Contents

51. We revise § 52.15(g)(3) of the Commission's rules to require an officer or authorized representative of the applicant to submit a declaration under penalty of perjury, pursuant to § 1.16 of the rules, attesting that all statements in the application and any appendices are true and accurate. We specify that false statements or certifications made to the Commission may result in rejection of an application or revocation of an authorization. Consistent with warnings included in filings for other Commission authorizations and CPNI certifications, we remind applicants that willful false statements are also punishable by fine and/or imprisonment, and/or forfeiture. Requiring a declaration under penalty of perjury will help ensure applications are accurate and that applicants are taking the application process seriously. The new declaration will also dissuade bad actors from filing false information or filing altogether out of fear of committing the crime of perjury and suffering increased punishment.

52. Our rules prohibit any applicant for any Commission authorization from making material false statements or omissions of material information in its dealings with the Commission. Our addition of a declaration under penalty of perjury is consistent with the international section 214 application process, and the authorization process for many other FCC authorizations, in which applicants include a verification executed by an officer or other authorized representative that the information included in the filing is true and accurate. This requirement is also consistent with Robocall Mitigation Database filings, which must include a declaration under penalty of perjury pursuant to § 1.16 of the Commission's rules. We further note that many direct access applicants already provide this type of declaration voluntarily.

Other Issues

53. *Declining to expand direct access to numbers.* Under our existing rules, VoIP direct access applicants must provide interconnected VoIP services rather than one-way VoIP or other types of services that make use of numbers. The Commission sought comment on whether to allow one-way VoIP or other types of service providers to have direct access to numbers. We elect not to do so at this time. The record does not support this expansion of direct access and, indeed, contains some opposition to doing so until the guardrails proposed in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), are adopted and effectively implemented. By avoiding unnecessary or premature expansion of direct access to such providers, we better protect valuable and limited numbering resources from potential bad actors, both because fewer entities will have direct access to numbers and because interconnected VoIP providers engage in commercial agreements with carriers and have obligations and checks that one-way providers may not. One-way VoIP providers have fewer regulatory obligations than traditional carriers or interconnected VoIP providers. Our action is also consistent with the rationale in the 2015 *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), for limiting direct access authorizations to interconnected VoIP providers. That order found that interconnected VoIP providers are more likely than other VoIP providers to need direct access to numbers because they are more likely to provide service used by consumers to replace ''plain old telephone service'' (POTS), and because outbound-only VoIP service does not require telephone numbers.

54. *Facilities readiness certification.* The *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), provided examples of what an applicant could submit to show ''facilities readiness'' as required by 47 CFR 52.15(g)(3)(i)(D). We sought comment on whether to revise § 52.15(g)(3) of the direct access rules to explicitly specify the documents that will be allowed to satisfy the ''facilities readiness'' requirement. Comments on the issue were divided, and, having considered the issue further, we decline to revise our rule. Rather, we conclude that the examples of technical documentation and information that applicants may submit to demonstrate facilities readiness in the *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), will continue to suffice. This approach preserves the flexibility of interconnected VoIP providers to submit information that is relevant to the unique characteristics of their networks. We also reaffirm our delegation of authority to the Bureau to request additional documentation on a case-by-case basis as necessary.

55. *Know-your-customer certification.* Section 64.1200(n)(3) requires voice service providers to ''[t]ake affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic.'' The *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), sought comment on whether to require direct access applicants to certify that they '' 'know their customer' through customer identity verification.'' Comments on this topic were mixed. After considering the record, we decline to adopt a specific know-your-customer certification at this time. As discussed below in the section addressing our referrals to the NANC, interconnected VoIP providers often resell numbers that they have obtained through the direct access process to third-party providers. Additionally, our decision to study the issue of number resale further, our adoption of new certifications as part of interconnected VoIP providers' applications for direct access authorization, and potential future action regarding number resale and indirect access recipient certifications, may accomplish the same objectives as would adopting a know-your-customer certification. We therefore reserve for future determination whether to adopt such a certification in the direct access application context.

Application Review and Authorization Oversight

56. In this section, we adopt measures to facilitate greater transparency regarding the review of direct access applications, make explicit our procedures for rejecting applications, and expand the bases on which direct access authorizations may be revoked and adopt a process for such revocations.

Codifying the Process for Reviewing Direct Access Applications

57. As proposed, we revise § 52.15(g)(3) of the Commission's rules to formalize the process for reviewing direct access applications. We direct Bureau staff to conduct a due-diligence review of an applicant's direct access application prior to seeking comment on it. This due-diligence review shall include, but is not limited to, determining whether the applicant is the subject of a past or pending Enforcement Bureau inquiry or whether the applicant has reportable foreign

ownership. This initial review process is critical to ensure illegal robocallers and other bad actors do not gain access to finite numbering resources. As noted above, we direct the Bureau to withhold placing any application submitted by an applicant with reportable foreign ownership on streamlined processing (that is, withhold issuing an ''Accepted-for-Filing Public Notice''). Additionally, the Bureau retains the authority to determine, at its discretion, whether to accept an application for non-streamlined filing so that it may further analyze whether a grant is in the public interest during and after the prescribed comment period. Furthermore, if the Bureau finds that an application raises public interest concerns, it may withhold placing it on streamlined processing until those concerns are addressed through applicant supplements or otherwise, even if the application otherwise meets procedural requirements. One commenter generally supported this approach, and no commenter opposed it.

58. The action we take in this document formalizes this preexisting practice and makes explicit the Bureau's authority in the rules. Specifically, the rules shall state that the Bureau will review direct access applications to ensure that they are complete and appropriate for streamlined treatment before the Bureau issues a public notice accepting the application for filing. By taking this step, we draw on our similar procedure governing review of international section 214 applications, and promote greater transparency and predictability for applicants regarding the process and timing applicable to a potential authorization. We note that applicants must provide additional information as requested by the Bureau during and after its initial review of a direct access application. Such responses must be submitted to the Bureau using the same method for submitting original application materials, unless otherwise directed. The majority of commenters supported Commission efforts to fight illegal robocalling and fraud, and staff diligence in reviewing applications and coordination with the Enforcement Bureau is part of ensuring potential robocallers do not gain access to numbering resources.

Codifying the Processes for Rejecting Direct Access Applications

59. We next revise § 52.15(g)(3) of the Commission's rules to authorize the Bureau to reject an application when it determines the applicant cannot satisfy the qualifications for a direct access authorization or that granting the application would not be in the public interest. We also adopt the proposal to authorize the Bureau, in its discretion, to reject applications submitted by an applicant which it has a reasonable basis to believe has engaged in behavior contrary to the public interest. As described above, we also authorize the Bureau to reject an application if it determines that the applicant made a false or misleading statement. We further conclude that the Bureau may reject applications if, for example, the Commission determines that an applicant with reportable foreign ownership presents national security, law enforcement, foreign policy, and/or trade policy risks. Next, to improve transparency, we also direct the Bureau to announce rejection decisions, the reasons for the rejection, and whether they are with or without prejudice via public notice. The record supports this action with no opposition. Similar to our action described above regarding codifying the Bureau's review process, this action codifying the Bureau's authority to reject applications makes explicit a practice that already occurs under our current rules. We believe this delegation of authority formalizing these practices leads to greater transparency and predictability.

Revocation of Authorization

60. We next adopt procedures concerning the grounds for revocation and/or termination of direct access to numbers authorizations. Specifically, we find that the Commission may revoke and/or terminate direct access to numbers authorizations of interconnected VoIP providers for failure to comply with the Communications Act of 1934, as amended (Act) and its implementing rules, other applicable laws and regulations, and/or where retention of those authorizations no longer serves the public interest. The Commission's Bureaus and Offices have revoked and/or terminated licenses and authorizations where warranted and within the scope of their authority. We revise § 52.15(g)(3) of the Commission's rules to specify the grounds on which we can revoke and/or terminate direct access authorizations, namely if: the authorization holder has failed to comply with the Commission's numbering rules; the authorization holder no longer meets the qualifications for a direct access authorization (*e.g.,* the authorization holder no longer meets the application certification requirements or the conditions applicable to authorization holders under the Commission's rules); the Commission uses the term ''termination'' where an authorization is terminated based on the authorization holder's failure to comply with a condition of the authorization, and has determined that the procedures applicable to termination need not mirror the procedures used for revocation of authorizations; the authorization holder, or officer or authorized representative of the authorization holder, has made a false statement or certification to the Commission; or revoking and/or terminating the authorization is in the public interest (*e.g.,* the Commission's assessment of the record evidence, including any filing by the Executive Branch agencies stating that retention of the authorization presents national security, law enforcement, foreign policy, and/or trade policy concerns and/or violates the terms of a mitigation agreement reached with the Executive Branch agencies).

61. We delegate authority to the Bureau and the Enforcement Bureau to determine appropriate procedures and initiate revocation and/or termination proceedings and to revoke and/or terminate an authorization, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the authorization holder with notice and opportunity to respond. In recent revocation proceedings, the Commission exercised its discretion to ''resolve disputes of fact in an informal hearing proceeding on a written record,'' and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself.

62. We also delegate authority to the Bureau and the Enforcement Bureau to direct the Numbering Administrator to suspend the authorization holder's access to new numbering resources after either bureau determines that the authorization holder acted willfully; or public health, interest, or safety requires an immediate suspension; or after giving the authorization holder notice and an opportunity to demonstrate or achieve compliance with our rules. Once either bureau revokes and/or terminates the authorization, the interconnected VoIP provider may no longer obtain additional numbers from the Numbering Administrator. While we do not at this time require an interconnected VoIP provider to return its numbers once the Bureau has revoked its direct access authorization, we refer to the NANC how such a requirement would impact consumers, end-users, and providers, and whether such a requirement would be feasible. Relatedly, we also do not at

this time restrict such providers from accessing numbering databases that may be necessary for providing service, such as routing and porting, for numbers it already has. Interconnected VoIP providers that have had their authorizations revoked may reapply for a new authorization if they can demonstrate that they have cured the grounds for the revocation and have taken measures to ensure they will not arise again. At this time, we decline to adopt number reclamation as a consequence of a revocation of direct access authorization. We refer the issue of the impact of number reclamation on consumers and end-users to the NANC. We therefore note that a revocation of direct access authorization does not obviate an interconnected VoIP provider's obligations under our rules with respect to the numbering resources it still maintains. These obligations include, *e.g.,* filing NRUF reports, making NANP cost-support contributions, and updating the Reassigned Numbers Database.

63. As affirmed recently in our *Caller ID Authentication Sixth Report and Order,* 88 FR 29035 (May 5, 2023), where the Commission grants a right or privilege, it unquestionably has the right to revoke or deny that right or privilege in appropriate circumstances. In addition, holders of these and all Commission authorizations have a clear and demonstrable duty to operate in the public interest. The action we take in this document promotes transparency into our direct access authorization enforcement mechanisms by formalizing in our rules the procedure by which we will revoke such authorizations. This step will put bad actors on notice regarding the consequences they will face if they flout the rules. Our delegation of authority to the Bureaus will permit efficient processing of revocations, allowing the Commission to respond to bad actors in a timely manner.

64. The record overwhelmingly supports these proposals. One commenter, for example, states that ''[i]t is important for the Commission to affirm its commitment to invoking this enforcement authority, because complaints under section 208 cannot be brought against VoIP providers, given their lack of common carrier status. Use of this enforcement authority with respect to VoIP entities will help 'combat access stimulation and other intercarrier compensation abuses. . . .' '' Similarly, another commenter states ''if a Direct Access grantee is clearly found to be engaged in [intercarrier compensation] arbitrage abuse, the FCC must impose real consequences for such abuses because VoIP providers and other noncommon carrier Direct Access grantees are not subject to section 208 of the Communications Act.''

North American Numbering Council Referrals

65. *Number use and resale generally.* The *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), sought comment on whether direct access applicants should certify that the numbers they are applying for will only be used to provide interconnected VoIP services. The record we received regarding this issue was insufficient for us to determine precisely how interconnected VoIP providers are using the numbers they obtain, whether any such uses result in violations of our rules, and whether any further restrictions would have anticompetitive effects or impair neutrality with respect to technology. While the revised certifications and accompanying obligations we adopt herein should substantially aid our efforts to curtail unlawful uses of numbering resources, questions remain as to how numbers obtained by interconnected VoIP providers may continue to facilitate illegal robocalling or access stimulation, as well as how our policies affect number exhaustion in particular area codes. The NANC is entrusted with advising the Commission on numbering policy and technical issues associated with numbering ''in the changing world of communications'' and must ensure that the NANP administration does not unduly favor or disfavor one technology over another. In light of the limited record on this important issue of number use by interconnected VoIP providers, including number use by direct and indirect customers of such providers and further consideration of additional measures to combat illegal robocalls such as know-your-customer obligations, we therefore direct the Bureau to request that the NANC examine and report on: (1) how interconnected VoIP providers that obtain direct access to numbers are using those numbering resources today, including, for example, the extent to which they use numbers obtained in a state to serve the customers of that state, the extent to which they use numbers obtained via direct access to provide non-interconnected VoIP service, and the extent to which numbers obtained via direct access are resold to other providers; (2) those uses in terms of compliance with the Commission's robocalling, Access Stimulation and other rules, area code exhaustion, and other public interest concerns, including potential consumer benefits or competitive harms of increasing the availability of direct access to numbers or placing more limits on the use of numbers obtained via direct access; and (3) possible options for mitigating any identified adverse impacts on consumers of number disuse, misuse, and resale, and how any Commission-imposed requirements for, or limits on, number use or resale would impact consumers, providers, and competition. We additionally require that the NANC examine, in considering how to minimize the adverse impacts on consumers and/or area code exhaustion arising from interconnected VoIP providers obtaining numbers in a state where they serve few or no customers, the efficacy of Commission adoption of a ''minimum contacts'' requirement to obtain numbering resources in a particular state; and possible options for defining such a standard.

66. *Foreign-originated calls and use of numbers obtained indirectly.* Questions also remain regarding the use of U.S. NANP numbers for calls that originate abroad and terminate in the U.S. market. In the *Fifth Caller ID Authentication FNPRM,* 87 FR 42670 (July 18, 2022), we sought comment on whether we should restrict the use of domestic numbering resources for such calls in order to prevent illegal robocalls, and whether other countries' regulations provide a useful roadmap for our own. We also sought comment on whether we should restrict indirect access to numbers (*e.g.,* numbers obtained on the secondary market) by both interconnected VoIP providers and carriers generally, or only for numbers that would be used in foreign-originated calls.

67. Commenters in that proceeding agreed that some entities are increasingly using numbers obtained, particularly through indirect access, to originate illegal robocalls. TNS recently noted that ''numbers may be purchased separately with one provider and linked with outbound calling minutes from a second,'' which it argued ''is a major source of bad actor traffic.'' Indeed, the success of STIR/SHAKEN ''may already be responsible for some bad actors shifting to acquiring batches of real numbers instead of spoofing.'' Commenters disagreed, however, on whether and what steps should be taken to prevent such abuse, including the appropriate liability standard, and whether restrictions should apply to all providers or solely to interconnected VoIP providers. Commenters urged the Commission to proceed cautiously when considering restrictions. Notably, no party in that proceeding addressed the merits of specific foreign restrictions

on numbering usage raised in the *Caller ID Authentication Fifth FNPRM,* 87 FR 42670 (July 18, 2022), and their applicability to the U.S. marketplace.

68. In light of the complexity of numbering arrangements, the mixed record in this and related proceedings where this issue has arisen, and limited comment on the specific number usage restrictions in place in other countries, we agree with commenters in the Call Authentication Trust Anchor docket who argue that we should proceed cautiously. We therefore direct the Bureau to request that the NANC examine and report on: the use of numbers obtained on the secondary market; numbers obtained on the secondary market would include, *e.g.,* numbers obtained from a reseller or a carrier partner. As part of its referral, the Bureau may choose to include direction to investigate issues or proposals related to number misuse it concludes may benefit from focused NANC examination, including proposals raised by commenters in the record of this and other related proceedings.

69. *Supplying numbers to customers on a trial basis.* In the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we asked whether we should require direct access applicants to certify that they will not supply numbers on a trial basis to new customers (*i.e.,* use of numbers for free for the first 30 days, etc.), a practice that commonly leads to bad actors gaining temporary control over numbers for the purposes of including misleading caller ID information. While some commenters agreed that supplying numbering resources for trial use can facilitate illegal robocalls, they provided no data to support their assertions. Accordingly, we refer this issue to the NANC for further study. We expect that this, and our other referrals to the NANC concerning number use, will give us a fuller picture regarding the customers' use of numbering resources, and thereby aid our future consideration of whether to impose a know-your-customer certification requirement. Specifically, we direct the Bureau to request that the NANC examine and report on: the practice of direct access authorization holders supplying telephone numbers to customers on a trial basis; the use of such ''trial basis'' numbers to engage in illegal robocalling, spoofing, or fraud; the effect on authorization holders in the event of a Commission prohibition on providing numbers on a trial basis; and the effect of supplying telephone numbers to customers on a trial basis on numbering resource exhaust.

70. *Number reclamation.* In the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), we sought comment on whether we should require an interconnected VoIP provider that has had its direct access authorization revoked to return the numbers that it has already obtained directly. Some commenters expressed concern that reclaiming numbers when direct access authority is revoked could have potential negative impacts on consumers, and that we should have proper procedures in place to mitigate these impacts. In light of the paucity of data submitted in the record, and in order to ensure that number reclamation as a consequence of a revocation of direct access authorization will not have a negative impact on consumers, we direct the NANC to study the benefits, risks, and solutions regarding reclamation of numbers when a direct access authorization is revoked, and the impact to consumers and end-users. Specifically, we direct the Bureau to request that the NANC examine and report on: the potential impact on consumers, end-users, and providers of number reclamation as a consequence of direct access authorization revocation; how providers or the Commission could mitigate any identifiable negative impacts for consumers and end-users; and how to accomplish returning reclaimed numbers to providers with reinstated direct access authorization. In its analysis, the NANC should additionally describe how interconnected VoIP providers use numbering databases in providing service, and how a restriction on accessing such databases would impact consumers, end-users, and providers.

Cost-Benefit Analysis

71. The rule clarifications and formalizations adopted in the *Second Report and Order* generally reflect a mandate from the TRACED Act. We conclude that the expected benefits will exceed the costs, which are minimal. The Commission found in the *Caller ID Authentication First Report and Order,* 85 FR 22029 (April 21, 2020), that widespread deployment of the STIR/SHAKEN framework will increase its effectiveness for both voice service providers and their subscribers, producing a potential annual benefit floor of $13.5 billion due to the reduction in nuisance calls and fraud. In addition, the Commission identified many non-quantifiable benefits, such as restoring confidence in incoming calls and ensuring reliable access to emergency and healthcare communications. The rules we adopt in the *Second Report and Order* are intended, consistent with the TRACED Act, to help unlock those benefits. As the Commission has noted, an overall reduction in illegal robocalls will greatly lower network costs by eliminating both the unwanted traffic and the labor costs of handling numerous customer complaints. The certifications and disclosures we adopt place minimal burdens on interconnected VoIP providers, and our formalization of the direct access application review process will ensure efficient use of staff time, imposing appropriately small costs on Commission staff. We therefore conclude that the rules we adopt in the *Second Report and Order* will impose only a minimal cost on direct access applicants while having the overall effect of materially lowering network costs and raising consumer benefits.

Legal Authority

72. The *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021), proposed concluding that our authority for adopting the new or revised direct access to numbers application requirements for interconnected VoIP providers arises from section 251(e) of the Act and section 6(a) of the TRACED Act. No commenter opposed these proposals regarding the basis for our legal authority to adopt the requirements described in the *Second Report and Order.* We conclude that section 251(e) of the Act provides sufficient authority for the requirements adopted in this Report and Order and that section 6(a) of the TRACED Act provides both supplemental and independent authority for those requirements specifically related to fighting illegal robocalls.

73. Section 251(e)(1) of the Act grants the Commission ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.'' Based on this grant, in the *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), the Commission concluded that section 251(e)(1) provided it with authority ''to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers.'' The Commission also has relied on section 251(e)(1) to require interconnected and one-way VoIP providers to implement the STIR/SHAKEN caller ID authentication framework and allow customers to reach the National Suicide Prevention Lifeline by dialing 988. Consistent with the Commission's well-established reliance on section 251(e) numbering authority with respect to interconnected VoIP providers, we conclude that section 251(e)(1) allows us to further refine our processes and requirements governing

direct access to numbers by interconnected VoIP providers.

74. We further conclude that section 6(a) of the TRACED Act provides us with separate, additional authority to adopt our proposals related to fighting illegal robocalls. Section 6(a)(1) gives the Commission authority ''to determine how Commission policies regarding access to number resources, including number resources for toll free and non-toll free telephone numbers, could be modified, including by establishing registration and compliance obligations,'' and to ''take sufficient steps to know the identity of the customers of such providers [of voice services], to help reduce access to numbers by potential perpetrators of violations of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b))''

75. The Commission commenced the required proceeding pursuant to the TRACED Act in March 2020, and expanded on those inquiries in the *VoIP Direct Access FNPRM,* 86 FR 51081 (Sept. 14, 2021). Section 6(a)(2) of the TRACED Act states that ''[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications.'' We conclude that section 6(a) of the TRACED Act, in directing us to prescribe regulations implementing policy changes to reduce access to numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt certain of the rule changes we are making to the direct access process with respect to fighting unlawful robocalls.

Procedural Matters

76. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Second Report and Order* on small entities.

77. *Paperwork Reduction Act.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Specifically, the rules adopted in 47 CFR 52.15(g)(3)(ii)(B) through (F), (I), (K), (L), and (N) and (g)(3)(x)(A) may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.

78. *Contact Person.* For further information about this proceeding, please contact Mason Shefa, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418–2494, or *mason.shefa@fcc.gov.*

Ordering Clauses

79. Accordingly, *it is ordered* that pursuant to sections 1, 3, 4, 201 through 205, 227b–1, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201 through 205, 227b–1, 251, 303(r), and section 6(a) of the TRACED Act, Public Law 116–105, 6(a)(1) through (2), 133 Stat. 3274, 3277 (2019), the *Second Report and Order* hereby *is adopted* and part 52 of the Commission's Rules, 47 CFR part 52, *is amended.* The *Second Report and Order* shall become effective 30 days after publication in the **Federal Register**, except for 47 CFR 52.15(g)(3)(ii)(B) through (F), (I), (K), (L), and (N) and (g)(3)(x)(A), which shall become effective upon an announcement in the **Federal Register** of OMB review and an effective date of those rules.

80. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of the *Second Report and Order,* including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

81. *it is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of the *Second 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).

Final Regulatory Flexibility Analysis

Need for, and Objectives of, the Second Report and Order

82. The *Second Report and Order* takes important steps aimed at stemming the tide of illegal robocalls perpetrated by interconnected VoIP providers and protecting the Nation's numbering resources from abuse by foreign bad actors by strategically updating the Commission's rules regarding how such providers obtain nationwide authorization for direct access to our Nation's limited numbering resources.

83. First, the *Second Report and Order* requires applicants to make robocall-related certifications to ensure compliance with the Commission's rules targeting illegal robocalls. Second, to mitigate the risk of providing bad actors abroad with access to our numbering resources, it requires applicants to disclose and keep current information about their ownership. Third, it requires applicants to certify to their compliance with other Commission rules applicable to interconnected VoIP providers. Fourth, it requires providers requesting numbers from a state's numbering administrator to comply with the state's laws and registration requirements that are applicable to businesses requesting numbers in that state. Fifth, it requires applicants to include a signed declaration that their applications are true and accurate. Sixth, and finally, it formalizes the Bureau's application review, application rejection, and authorization revocation processes.

Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

84. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

85. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to

respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

86. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

87. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

88. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

89. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school district with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

90. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

91. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

92. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Exchange Service Providers include the following types of providers: ILECs, CAPs and CLECs, Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

93. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small

business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

94. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Competitive Local Exchange Service Providers include the following types of providers: CAPs and CLECs, Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

95. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

96. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

97. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

98. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

99. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

100. In the *Second Report and Order,* we adopt new certifications and disclosures in our direct access application process for all interconnected VoIP provider applicants. Upon the effective date of these rules, we require explicit acknowledgment of compliance with all robocall regulations; implement disclosure and update requirements regarding ownership and control; require certification of compliance with other applicable Commission regulations and certain state law; and add a declaration requirement to hold applicants accountable for the truthfulness and accuracy of their direct access applications.

101. Specifically, we require a direct access applicant to certify that it will use numbering resources lawfully and will not knowingly encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud. If the applicant has a foreign owner whose interest exceeds the reporting threshold set forth in § 63.18(h) of our rules, those applications will be placed on a ''non-streamlined'' processing track. We require applicants for a Commission direct access authorization to disclose information, including the name, address, country of citizenship, and principal business of every person or entity that directly or indirectly owns at least ten percent of the equity and/or voting interest, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities to the nearest one percent, consistent with the requirements of international section 214 applicants. Also consistent with section 214, we require an applicant to certify whether it is, or is affiliated with, a foreign carrier, and cross-reference with § 63.18(i) for consistency. A chart or narrative describing the applicant's corporate structure is also required for interconnected VoIP applicants.

102. To ensure ownership information remains up to date, the *Second Report and Order* revises § 52.15(g)(3) to require interconnected VoIP providers that obtain direct access authorization under the revised rules to submit an update to the Commission and each applicable state within 30 days of any change to the ownership information disclosed in their direct access applications. Authorization holders are also required to submit updated or corrected ownership information to the states for which they have acquired or requested numbers at the time of the ownership change and in the same manner the providers would submit a correction or update to their original applications. We also revise § 52.15(g)(3) to require applicants to certify their compliance with the Communications Assistance with Law Enforcement Act (CALEA), and provide evidence in their applications that demonstrates their compliance with both CALEA and the Commission's part 9 public safety rules. A new certification cross-references new access arbitrage rules, thus revising § 52.15(g)(3) to require interconnected VoIP providers applying for direct access to numbers to certify that they will not use numbering resources to evade our access stimulation rules. Interconnected VoIP providers that must file FCC Forms 477 and 499 will now provide evidence that they have complied with these obligations, and any successor filing obligations, when filing a direct access application.

103. The *Second Report and Order* further revises § 52.15(g)(3) of our rules to require an officer or authorized employee representative of the applicant to submit a declaration under penalty of perjury, pursuant to § 1.16 of the rules, attesting that all statements in the application and any appendices are true and accurate. All updated or corrected ownership information shall be filed though existing methods such as the Electronic Comment Filing System (ECFS) through the Direct Access intake docket (Inbox 52.15) and via email to *DAA@fcc.gov,* unless the Bureau specifies another method. The Bureau may request additional documentation as necessary, during and after its initial review of a direct access application.

104. After reviewing the record, we received no concerns about unique burdens from small businesses that would be impacted by the new certifications adopted in the *Second Report and Order.* As such, the Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions or to quantify the cost of compliance for small entities. The Commission, however, anticipates the approaches it has taken to implement the requirements will have minimal or de minimis cost implications because many of these obligations are required to comply with existing Commission regulations.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

105. The RFA requires an agency to provide ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

106. The *Second Report and Order* considered alternatives that may reduce the impact of these rule changes on small entities. Some proposals were not adopted because the requirements already exist under other parts of the Commission's rules. New obligations regarding STIR/SHAKEN caller ID authentication or robocall mitigation specifically for interconnected VoIP providers were not adopted; instead applicants are required to certify compliance with preexisting rule sections. This reduces confusion and maintains accuracy should the Commission decide to revise the robocall-related dockets. We declined to adopt our proposal to require direct access authorization holders to certify on their applications, or inform the Commission if the authorization holder is subject to a Commission or other regulator or law enforcement investigation due to its robocall mitigation plan being deemed insufficient, or due to suspected unlawful robocalling or spoofing, because authorization holders are already required to do so under the Commission's rules.

107. There was not strong record support for certain proposals that require action of the Office of International Affairs (OIA) or the Bureau, so we declined to adopt those finding that it is more efficient to rely on current practices to address these concerns. These include automatic referral of interconnected VoIP providers' direct access applications to the Executive Branch agencies when an applicant has reportable foreign ownership, and developing a list of ''Standard Questions'' for interconnected VoIP applicants with reportable foreign ownership. We also declined to adopt rules to specify the documents that will be allowed to satisfy the ''facilities readiness'' requirement in the Commission's current rules. Comments on the issue were divided and we conclude that existing examples of technical documentation are sufficient. Further, after considering the record, we declined to adopt a know-your-customer certification proposal at this time.

108. As discussed above, the new certification requirements in the *Second Report and Order* are minimally burdensome, as they merely require providers to certify that they are compliant with preexisting Commission rules. Our public safety and CALEA documentation submission requirement merely formalizes existing Bureau practice of requesting such information from direct access applicants. Our new ownership disclosure requirement tracks requirements already imposed on providers in the section 214 context. For these reasons, we believe that small and other interconnected VoIP providers will not have an issue including these new certifications and disclosures in their direct access authorization applications.

Report to Congress

109. The Commission will send a copy of the *Second Report and Order,* including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 303, 332, unless otherwise noted.

■ 2. Amend § 52.15 by revising and republishing paragraph (g)(3) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(3) *Commission authorization process.* A provider of interconnected VoIP service may show a Commission authorization obtained pursuant to this paragraph (g)(3) as evidence that it is authorized to provide service under paragraph (g)(2) of this section.

(i) *Definition.* The term *foreign carrier* found in this section is given the same meaning as in § 63.09(d) of this chapter.

(ii) *Contents of the application for interconnected VoIP provider numbering authorization.* An application for authorization must reference this section and must contain the following:

(A) The applicant's name, address, and telephone number and contact information for personnel qualified to address issues relating to regulatory requirements, compliance with Commission's rules in this chapter, 911, and law enforcement;

(B) An acknowledgment that the authorization granted under this paragraph (g)(3) is subject to compliance with applicable Commission numbering rules in this part; numbering authority delegated to the states; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C)–(F) [Reserved]

(G) An acknowledgment that the applicant must file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators;

(H) Proof that the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date in accordance with paragraph (g)(2) of this section;

(I) [Reserved]

(J) A certification that the applicant complies with its applicable Universal Service Fund contribution obligations under part 54, subpart H, of this chapter, its Telecommunications Relay Service contribution obligations under § 64.604(c)(5)(iii) of this chapter, its NANP and local number portability (LNP) administration contribution obligations under §§ 52.17 and 52.32 of this chapter, and its obligations to pay regulatory fees under § 1.1154 of this chapter;

(K) A certification that the applicant possesses the financial, managerial, and technical expertise to provide reliable service. This certification must include the name of applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order; and

(L) [Reserved]

(M) A certification pursuant to §§ 1.2001 and 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, *see* 21 U.S.C. 862.

(N) [Reserved]

(iii) *Filing procedure.* An applicant for Commission authorization under this section must file its application electronically through the ''Submit a Non-Docketed Filing'' module of the Commission's Electronic Comment Filing System (ECFS). Each application shall be accompanied by the fee prescribed in part 1, subpart G, of this chapter.

(iv) *Public notice and review period for streamlined pleading cycle.* Upon determination by the Wireline Competition Bureau (Bureau) that the applicant has filed a complete application that is appropriate for streamlined treatment, the Bureau will assign a docket number to the application and issue a public notice stating that the application has been accepted for filing as a streamlined application. The applicant must make all subsequent filings relating to its application in this docket. Parties may file comments addressing an application for authorization no later than 15 days after the Bureau releases a public notice stating that the application has been accepted for filing, unless the public notice specifies a different filing date. An application under this section is deemed granted by the Commission on the 31st day after the Commission releases a public notice stating that the application has been accepted for filing, unless the Bureau notifies the applicant

that the grant will not be automatically effective.

(v) *Non-streamlined processing of applications.* If an application discloses that the applicant has reportable ownership by a foreign person or entity, the Bureau shall remove the application from streamlined processing. The Bureau may also remove an application from streamlined processing at its discretion for other reasons. The Bureau shall notify the applicant by public notice that it is removing the application from streamlined processing, and shall state the reason for the removal. An application may also receive non-streamlined processing if:

(A) An applicant fails to respond promptly to Commission inquiries;

(B) An application is associated with a non-routine request for waiver of the Commission's rules in this chapter;

(C) An application would, on its face, violate a Commission rule in this chapter or the Communications Act;

(D) Timely filed comments on the application raise public interest concerns that require further Commission review; or

(E) The Bureau determines that the application requires further analysis to determine whether granting the application serves the public interest.

(vi) *Additional information.* Applicants must provide additional information requested by the Bureau during and after its initial review of a direct access application. Failure to respond to such a request or other official correspondence may result in the rejection of the application without prejudice. Any additional information that the Bureau may require must be submitted in the same manner as the original application filing, unless the Bureau specifies another method.

(vii) *Rejection of applications.* The Bureau may reject an application by announcing the rejection, the reasons for the rejection, and whether the rejection is with or without prejudice via public notice if it determines or has a reasonable basis to believe that:

(A) The applicant cannot satisfy the qualification requirements for a Commission authorization under this paragraph (g)(3);

(B) The applicant has made a false statement or certification to the Commission;

(C) The applicant has engaged in behavior contrary to the public interest; or

(D) Granting the application would not serve the public interest.

(viii) *Authorization suspension.* The Wireline Competition Bureau or Enforcement Bureau may suspend a direct access authorization holder's access to new numbering resources under 5 U.S.C. 558(c):

(A) After either Bureau determines that the authorization holder acted willfully; or public health, interest, or safety requires an immediate suspension; or

(B) After giving the authorization holder notice and an opportunity to demonstrate compliance with the Commission's rules in this chapter.

(ix) *Authorization revocation.* The Wireline Competition Bureau or Enforcement Bureau shall determine appropriate procedures and initiate revocation and/or termination proceedings and revoke and/or terminate an authorization, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the authorization holder with notice and opportunity to respond. Either Bureau may commence such revocation and/or termination proceedings if:

(A) The authorization holder has failed to comply with the Commission's numbering rules in this part.

(B) The authorization holder no longer meets the requirements for a Commission authorization under this paragraph (g)(3);

(C) The authorization holder, or officer or authorized representative of the authorization holder, has made a false statement or certification to the Commission; or

(D) Revoking and/or terminating the authorization is in the public interest.

(x) *Conditions applicable to all interconnected VoIP provider numbering authorizations.* An interconnected VoIP provider authorized to request numbering resources directly from the Numbering Administrators under this section shall:

(A) Maintain the accuracy of all contact information and certifications in its application. If any contact information or certification is no longer accurate, the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change of contact information or certification. The Commission may use the updated information or certification to determine whether a change in authorization status is warranted;

(B) Comply with the applicable Commission numbering rules in this part; numbering authority delegated to the states; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C) File requests for numbers with the relevant state commission(s) at least thirty (30) days before requesting numbers from the Numbering Administrators; and

(D) Provide accurate regulatory and numbering contact information to each state commission when requesting numbers in that state.

* * * * *

■ 3. Delayed indefinitely, further amend § 52.15 by:

■ a. Revising paragraph (g)(3)(ii)(B);

■ b. Adding paragraphs (g)(3)(ii)(C) through (F) and (I);

■ c. Revising paragraph (g)(3)(ii)(K);

■ d. Adding paragraph (g)(3)(ii)(L);

■ e. Removing the period at the end of paragraph (g)(3)(ii)(M) and adding ''; and'' in its place;

■ f. Adding paragraph (g)(3)(ii)(N); and

■ g. Revising paragraphs (g)(3)(iv) and (g)(3)(x)(A).

The additions and revisions read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(3) * * *

(ii) * * *

(B) An acknowledgment that the authorization granted under this paragraph (g)(3) is subject to compliance with applicable Commission numbering rules in this part; numbering authority delegated to the states, and the state laws, regulations, and registration requirements applicable to businesses operating in each state where the applicant seeks numbering resources; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C) A certification that the applicant will not use the numbers obtained pursuant to an authorization under this paragraph (g)(3) to knowingly transmit, encourage, assist, or facilitate illegal robocalls, illegal spoofing, or fraud, in violation of robocall, spoofing, and deceptive telemarketing obligations under §§ 64.1200, 64.1604, and 64.6300 through 64.6308 of this chapter and 16 CFR 310.3(b);

(D) A certification that the applicant has fully complied with all applicable STIR/SHAKEN caller ID authentication and robocall mitigation program requirements and filed a certification in the Robocall Mitigation Database as required by §§ 64.6301 through 64.6305 of this chapter;

(E) A certification with accompanying evidence that the applicant complies with its 911 obligations under part 9 of this chapter, and that it complies with the provisions of the Communications Assistance with Law Enforcement Act, 47 U.S.C. 1001 *et seq.* Wireline Competition Bureau (Bureau) or other

Commission staff may request additional documentation from the applicant to demonstrate compliance with these public safety obligations, where necessary;

(F) A certification that the applicant complies with the Access Stimulation rules under § 51.914 of this chapter;

* * * * *

(I) Proof that the applicant has filed FCC Forms 477 and 499, or a statement explaining why each such form is not yet applicable;

* * * * *

(K) A certification that the applicant possesses the financial, managerial, and technical expertise to provide reliable service. This certification must include the name of applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that neither the applicant nor any of the identified personnel are being or have been investigated by the Commission, law enforcement, or any regulatory agency for failure to comply with any law, rule, or order, including the Commission's rules in this chapter applicable to unlawful robocalls or unlawful spoofing;

(L) The same information, disclosures, and certifications required by § 63.18(h) and (i) of this chapter;

* * * * *

(N) A declaration under penalty of perjury pursuant to § 1.16 of this chapter that all statements in the application and any appendices are true and accurate. This declaration shall be executed by an officer or other authorized representative of the applicant.

* * * * *

(iv) *Public notice and review period for streamlined pleading cycle.* Upon determination by the Bureau that the applicant has filed a complete application that is appropriate for streamlined treatment, the Bureau will assign a docket number to the application and issue a public notice stating that the application has been accepted for filing as a streamlined application. The applicant must make all subsequent filings relating to its application in this docket. Parties may file comments addressing an application for authorization no later than 15 days after the Bureau releases a public notice stating that the application has been accepted for filing, unless the public notice specifies a different filing date. An application under this section is deemed granted by the Commission on the 31st day after the Commission releases a public notice stating that the application has been accepted for filing, unless the Bureau notifies the applicant that the grant will not be automatically effective.

* * * * *

(x) * * *

(A) Maintain the accuracy of all contact information, certifications, and ownership or affiliation information in its application. If any contact information, certification, or affiliation information submitted in an application pursuant to this section, is no longer accurate, the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change of contact information, certification, or affiliation information. Regarding ownership information, if the holders of equity and/or voting interests in the provider change such that a provider that previously did not have reportable ownership or control information under paragraph (g)(3)(ii)(L) of this section now has reportable ownership or control information, or there is a change to the reportable ownership or control information the provider previously reported under paragraph (g)(3)(ii)(L), the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change to its ownership or control information. The Commission may use the updated contact information, certifications, or ownership or affiliation information to determine whether a change in authorization status is warranted;

* * * * *

[FR Doc. 2023–24679 Filed 11–17–23; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1852

[Notice (23–118)]

RIN 2700–AE75

NASA Federal Acquisition Regulation Supplement: NASA FAR Supplement—NASA Ombudsman Program (NFS Case 2023–N022)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: National Aeronautics and Space Administration (NASA) is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to update the policy concerning the NASA Ombudsman Program.

DATES: Effective December 20, 2023.

FOR FURTHER INFORMATION CONTACT: James Becker, telephone 301–286–1296; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the NASA FAR Supplement(NFS) to update the policy concerning the NASA Ombudsman Program.

When awarding a multiple award indefinite-quantity contracts, 41 U.S.C. 4106(g) requires agencies to have a task- and delivery-order ombudsman who will be responsible for reviewing complaints from contractors and ensuring that they are afforded a fair opportunity to be considered for the award of an order, consistent with the procedures in the contract. This requirement is implemented at Federal Acquisition Regulation (FAR) 16.505(b)(8). FAR 16.504(a)(4)(v) requires the solicitation and contract for an indefinite-quantity to include the name, address, telephone number, facsimile number, and email address of the agency's task and delivery order ombudsman, if multiple awards may be made.

To implement the requirement at FAR 16.504(a)(4)(v), several agencies created a contract clause that provides contractors with the agency ombudsman's responsibilities and contact information. NFS clause 1852.215–84 Ombudsman, Alternate I, provides this information for task and delivery order contracts. As several agencies use a clause to provide this information to contractors, the Department of Defense (DOD), General Services Administration (GSA), and NASA processed a FAR case to implement a clause at the FAR level that would be available for all agencies to use.

DOD, GSA, and NASA have undertaken rulemaking to formally incorporate this change. These rulemaking changes were published in the **Federal Register** (84 FR 38836) on August 7, 2019, FAC 2019–04, and FAR Case 2017–020, Ombudsman for Indefinite Delivery Contracts, effective September 6, 2019.

This rule does not add any new solicitation provisions or contract clauses. This rule merely revises the policy concerning the NASA Ombudsman Program by deleting Alternate I and references to the use of Alternate I of NFS clause 1852.215–84 Ombudsman. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because NASA is not issuing a new regulation; rather, this rule is merely deleting Alternate I to NFS clause 1852.215–84 Ombudsman since the alternate to the clause is no longer needed.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. requirements with which vendors must comply.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1815 and 1852

Government procurement.

Erica D. Jones,

NASA FAR Supplement Manager.

Accordingly, NASA amends 48 CFR parts 1815 and 1852 as follows:

■ 1. The authority citation for parts 1815 and 1852 continue to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1815—CONTRACTING BY NEGOTIATION

■ 2. Revise section 1815.7003 to read as follows:

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 1852.215–84 by:

■ a. Revising the date of the clause and paragraph (b); and

■ b. Removing ALTERNATE I.

The revisions read as follows:

1852.215–84 Ombudsman.

* * * * *

Ombudsman (NOV 2023)

* * * * *

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at *https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf.* Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End Clause)

[FR Doc. 2023–25581 Filed 11–17–23; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221215–0272; RTID 0648–XD537]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers From NY and MD to NC

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of quota transfers.

SUMMARY: NMFS announces that the States of New York and Maryland are transferring a portion of their 2023 commercial bluefish quota to the State of North Carolina. These adjustments to the 2023 fishing year quotas are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial bluefish quotas for New York, Maryland, and North Carolina.

DATES: Effective November 17, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the Coastal States from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each State is described in § 648.162, and the final 2023 allocations were published on December 21, 2022 (87 FR 78011).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP), as published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for transferring bluefish commercial quota from one State to another. Two or more States, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: the transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfers approved in this notification.

New York is transferring 25,000 pounds (lb) (11,340 kilograms (kg)) and Maryland is transferring 50,000 lb (22,680 kg) to North Carolina, through mutual agreements of the States. These transfers were requested to ensure that North Carolina would not exceed its 2023 State quota. The revised bluefish quotas for 2023 are: New York, 535,031 lb (242,686 kg); Maryland, 65,409 lb (29,669 kg); and North Carolina, 1,639,077 lb (743,473 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2023.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–25579 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 222
Monday, November 20, 2023

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

[Docket No. RHS–23–SFH–0016]

RIN 0575–AD33

Streamlining and Improvement of Single Family Housing Direct Programs

AGENCY: Rural Housing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), an agency in the Rural Development (RD) mission area of the United States Department of Agriculture (USDA), proposes to amend the current regulation for the following Single Family Housing (SFH) Direct Programs: Section 502 Direct Loan Program and the Section 504 Loan and Grant Program. The Agency also intends to update the Section 306C Loan and Grant Programs which is a program administered under the Rural Utilities Service (RUS), and where RHS is designated to make grants to eligible individuals. The intent of this proposed rule is to reduce the regulatory burdens on applicants, borrowers, and partners by enhancing program delivery, expanding customer service, promoting consistency between the direct and guaranteed SFH loan programs where feasible and aligning the programs with current housing market conditions and mortgage loan practices.

DATES: Comments on the proposed rule must be received on or before January 19, 2024.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search for dockets and documents on agency actions'' box, enter the following docket number: (RHS–23–SFH–0016) or RIN# 0575–AD33. To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: ''Streamlining and Improvement of Single Family Housing Direct Programs'' from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about RD and its programs is available at the following website: *https://www.rurdev.usda.gov.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Sonya Evans, Finance and Loan Analyst, SFH Direct Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: (423) 268–4333, Email: *Sonya.Evans@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multifamily housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian Tribes, State and Federal Government agencies, and local communities.

Well built, affordable housing is essential to the vitality of communities in rural America. The Agency's SFH programs give families and individuals the opportunity to buy, build, or repair affordable homes located in rural America. Eligibility for these loans, loan guarantees, and grants is based on income and varies according to the average median income for each area. The RHS administers the following SFH Programs:

Section 502 Direct Loan Program is implemented under 7 CFR part 3550 and authorized by section 502 of the Housing Act of 1949, as amended, (42 U.S.C. 1472). The purpose of the program is to assist low- and very low-income applicants who currently do not own adequate housing and cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

Section 502 Guaranteed Loan Program is implemented under 7 CFR part 3555 and is authorized by section 502 of the Housing Act of 1949, as amended, (42 U.S.C. 1472). The purpose of the program is to assist low- and moderate-income applicants the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

Section 504 Loan and Grant Program is implemented under 7 CFR part 3550 and is authorized by section 504 of the Housing Act of 1949, as amended, (42 U.S.C. 1474). This program offers loans to very low-income homeowners who cannot obtain other credit to repair or rehabilitate their properties. The Section 504 program also offers grants to homeowners aged 62 or older who cannot obtain a loan to correct health and safety hazards or to make the unit accessible to household members with disabilities.

Another RD mission area agency, the RUS, administers the Section 306C Loan and Grant Program which is authorized by section 306C of the Consolidated Farm and Rural Development Act, as amended, (7 U.S.C. 1926c), and implemented under 7 CFR part 1777 and 7 CFR part 3550. Under subpart C of 7 CFR part 3550, RHS makes 306C Water and Waste Disposal (WWD) Grants to very low-income individuals (*i.e.,* homeowners) in designated colonias who cannot obtain other credit to facilitate access to community water and waste disposal systems. Grant funds may be used only to pay for costs related to connection fees and related costs to connect to a community or central water supply or waste system which may include installation of necessary plumbing and related fixtures, and construction or partitioning of a bathroom within dwellings lacking such facilities.

The SFH program undertook a systematic review of its regulations at 7

CFR part 3550 and procedures currently in place to administer its programs. It was determined there was a need to provide additional clarity and to provide consistency between interdepartmental regulations. The changes also address the need for program improvements such as revisions related to down payment requirements within the Direct Programs.

II. Discussion of the Proposed Rule

This proposed rulemaking is part of the Agency's efforts to: (1) align, where appropriate, the direct and guaranteed SFH loan programs, and (2) address current housing market conditions and mortgage loan practices through program improvements. RHS's intention is to streamline its program procedures and revise regulations by removing outdated regulations and simplifying practices and procedures for borrowers and applicants.

As the Agency reviewed its regulations at 7 CFR part 3550 and the procedures that are currently in place for administering the Section 502 Direct Loan Program and the Section 504 Loan and Grant Program, which includes a subpart for application of the 306C WWD Grant, it was discovered that there is currently no express prohibition against lending in lava zones under these programs. The Section 502 Guaranteed Loan Program regulation, does, however, expressly prohibit lending in lava zones. The proposed change will align the aforementioned programs on this issue and minimize confusion for applicants and partners in the affected areas. The proposed changes will also clarify the terms for new dwellings and new construction for applicants and partners. Additionally, the proposed changes will assist with addressing the lack of affordable housing stock by providing flexibility for applicants and partners purchasing Real Estate Owned (REO) properties or through non-program loan terms.

The following information provides further details of the proposed rule changes:

1. Refine the definition of ''New Dwelling or unit'' in 7 CFR 3550.10 Definitions; add a definition for New Construction to alleviate confusion in the terminology; and corresponding and additional changes to 7 CFR 3550.53(d)(1)(ii), 7 CFR 3550.63(b)(1), 7 CFR 3550.63(b)(2), and 7 CFR 3550.102(e)(1), under which the Section 502 Direct Loan and Section 504 Loan and Grant programs are implemented:

Section 502 Direct Loans may be used by loan recipients to purchase a building site and construct new housing ('*new construction*') or purchase newly constructed housing ('*new dwelling*'). The builder funds a new dwelling. The Agency funds a new construction. While the terminology is similar, the distinction is important because eligibility for the Compensation for Construction Defects Program (Section 509) is based on the construction timing, who funds the construction, and the applicant's program eligibility. The factors that determine the applicant's eligibility for the Compensation for Construction Defects Program can be found at 7 CFR 1924.265 and at the website: *https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1924/subpart-F/section-1924.265*.

The Agency considers funding for a new construction whether or not the construction has started at the time the purchase agreement was signed. This includes instances where the builder will retain ownership of the lot during construction, or the construction has commenced prior to closing. In these instances, the funded construction can only be closed after construction of the housing is completed. Alternatively, if the construction has not started and the Agency will provide the construction financing, the closing will be prior to construction. As noted, closing timing is based on when construction occurs and who funds the construction.

The Agency proposes to clarify terms by adding the language ''prior to loan closing'' to the phrase ''is to be constructed'' in the definition of ''new dwelling or unit'' for definitions found at 7 CFR 3550.10. The Agency proposes that this addition will provide clarification of the timing of construction periods that differentiate a new dwelling and a new construction. Furthermore, adding the language ''at the time of loan approval'' to the phrase ''less than 1 year old'' clarifies the parameters of this definition.

The addition of the term and definition for *'New construction'* in 7 CFR 3550.10 is proposed to separate the terms and provide clarity regarding the varying construction quality documents required for new dwellings and new construction. Furthermore, this amendment proposes to support a corresponding update in 7 CFR 3550.63(b)(1).

Removal of 7 CFR 3550.63(b)(2) will streamline market value limitations, thereby permitting a corresponding change to the program handbook to allow for a whole house inspection to serve as adequate documentation of construction quality for a new dwelling.

2. A*mend 7 CFR 3550.52(d)(6) to remove reference to State Director and replace with requirement for Agency approval when granting allowable exceptions for non-certified loan packaging bodies, revise language regarding application submission requirements, and allow certified packaging fees to be added to the loan in excess of the area loan limit and appraised value of the house, which is implemented under the Section 502 Direct Loan Program:*

The revision will clarify that Form 410–4, Uniform Residential Loan Application, is part of the application but does not constitute a full application package.

Lastly, a revision is needed to allow packaging fees resulting from the certified loan application packaging process outlined in 7 CFR 3550.75 to be added to the Section 502 Direct loan amount in excess of the area loan limit and appraised value of the house. This cost is similar to other allowable excess costs for critical loan-related services or actions, which include the appraisal fee, tax service fee, homeownership education fee, and initial contribution to the escrow account. Certified application packagers provide an integral service that allows many applicants to access the Direct Program who would otherwise not be aware of it, or who lack the resources to complete the application process on their own. Well-developed application packages submitted through the certified process help to reduce Agency processing time and provide the applicant with a higher priority for processing. This change will reflect the value the service (and its cost) provides the applicant.

3. *Add language to 7 CFR 3550.56(b) and 7 CFR 3550.105 to prohibit lending in U.S. Geological Survey (USGS) Lava-Flow Hazard Zones 1 and 2, which will provide interdepartmental alignment between 7 CFR 3550, which implements the Section 502 Direct Loan Program, and the Section 504 Loan and Grant Program, including the subpart for application of the 306C WWD Grant, and current regulations in 7 CFR part 3555 for the Section 502 Guaranteed Loan Program:*

A home located in the lava-flow hazard zones 1 and 2 represents a significantly hazardous risk. 7 CFR 3550.10 defines a hazard as, ''a condition of the property that jeopardizes the health or safety of the occupants or members of the community, that does not make it unfit for habitation (See also the definition of major hazard in this section.).''

According to 7 CFR 3550.2, the purpose of the direct RHS SFH loan programs (the Direct Program) is to provide low- and very low-income

people that live in rural areas with an opportunity to own adequate, but modest, decent, safe, and sanitary dwellings and related facilities.

Currently, the Direct Program does not have specific guidance related to volcanic/lava hazards. The Agency intends to add language to 7 CFR 3550.56(b) and 7 CFR 3550.105 to prohibit lending in U.S. Geological Survey (USGS) Lava-Flow Hazard Zones 1 and 2. Adding this language to the regulation will align with the guaranteed loan program and others in the industry in protecting borrowers.

4. *Amend 7 CFR 3550.64 to increase net family asset limits before consideration of assets toward a down payment requirement and to remove the down payment requirement when the borrower is purchasing a REO property from the Agency, which is implemented under the Section 502 Direct Loan Program:*

The Agency published a direct final rule in the **Federal Register** on August 22, 2008, revising the minimum insurance deductible amounts, removing specific dollar limits with regards to insurance deductible clauses, clarifying the amount of required dwelling coverage, and revising the applicant net asset limitation. An adjustment to asset limits for non-metropolitan median household income, set at $48,201, has not been updated since 2008 (73 FR 49593). Non-metropolitan median household income for 2022 has increased to $71,300. With the median household increase, there has also been a 37.6% cumulative rate of inflation from the years 2008 to 2022, thus increasing the cost of living and goods. Increasing asset limits will allow fixed income households the ability to hold onto assets for emergency purposes, rather than relying on credit in these circumstances, and for elderly households to hold onto funds potentially set-aside for final expenses.

The Agency anticipates that removing the down payment requirement when the borrower is purchasing a REO property will: (1) increase borrower interest in purchasing REO properties, (2) reduce holding times and costs incurred by the Agency and depreciation of the properties; and (3) promote affordable housing in rural communities.

5. *Amend 7 CFR 3550.67(b)(1) to clarify that amounts included for repairs must be part of an initial purchase or finance loan to qualify for a 38-year term, which is implemented under the Section 502 Direct Loan Program:*

The intention of this revision is to clarify that amounts included for repairs must be part of an initial purchase or finance loan to qualify for a 38-year term; whereas the current language could be read to allow a 38-year term for initial repair-only loan through the Section 502 Direct Loan Program which is not consistent with Agency policy.

6. *Remove language in 7 CFR 3550.74(c)(2) and renumber the list accordingly, which is implemented under the Section 502 Direct Loan Program:*

The Agency proposes the removal of the down payment requirement for non-program loans. This proposed removal would eliminate a burdensome requirement for borrowers and applicants who request to purchase through non-program loan terms and for whom a non-program loan has been found to be in the Government's best interests. This removal aligns with another revision in this proposed rule to remove down payment requirements for the purchase of REOs in 7 CFR 3550.64.

7. *Remove language in 7 CFR 3550.75(b)(1)(iv) and (b)(2)(v), that states ''if determined necessary by a State Director'' which is contradictory to other instructions for certified packaging requirements, and is implemented under the Section 502 Direct Loan Program:*

Currently, it is unclear in 7 CFR 3550.75(b)(1)(iv) and (b)(2)(v) what authority a State Director may or may not have with regard to waiving the requirement that a certified packager must use an intermediary. There is guidance that addresses an opt-out option that State Directors can grant for certified loan packagers to separate from an intermediary, but it also outlines the requirements that a certified packager must meet in order to be granted this consideration. The removal of ''if determined necessary by a State Director'' will avoid any misunderstanding that a State Director can automatically waive all requirements for a certified packager to use an intermediary with a revision to instead address the allowance for the Agency to allow waivers when applicable.

8. *Amend 7 CFR 3550.103(e) to increase net family household assets for elderly families and non-elderly families before consideration of funds toward reduction of requested assistance, which is implemented under the Section 504 Loan and Grant Program and includes a subpart for application of the 306C WWD Grant:*

An adjustment to asset limits has not been made since the Agency published a direct final rule in 2008 (*see,* 73 FR 49593 at the website: *https://www.federalregister.gov/documents/2008/08/22/E8-19350/direct-single-family-housing-loans-and-grants*). In 2008, the non-metropolitan median household income was at $48,201. Non-metropolitan median household income for 2022 increased to $71,300. With this median household income increase, there has also been a 37.6% cumulative rate of inflation from 2008 through 2022, thus increasing the cost of living and goods. Increasing asset limits will allow fixed income households the ability to maintain assets for emergency purposes, rather than relying on credit in these circumstances. This change will also align with the proposed changes to 7 CFR 3550.64 regarding excess assets considered toward down payment. The Agency proposes that amending 7 CFR 3550.103(e) to increase net family household assets for elderly families and non-elderly families before consideration of funds toward reduction of requested assistance will increase the number of eligible applicants.

9. *Remove the subdividable lot restrictions in 7 CFR 3550.105(b), which is implemented under the Section 504 Loan and Grant Program and includes a subpart for application of the Section 306C WWD Grant:*

The Agency has been conducting a pilot program since Fiscal Year 2019 and has found that the removal of the requirement which restricts subdividable lots in 7 CFR 3550.105(b) held no risk for the Agency. The Agency concluded that this prohibition is restrictive for the Section 504 program considering ownership is previously established at the time of application. This restriction is a barrier to very low-income rural homeowners in need of repairs. The site must still be determined modest for the area and cannot be used for income producing purposes as currently defined at 7 CFR 3550.10 and 7 CFR 3550.106(a). If this restriction is not removed, modest homes that are typical for the area will not be eligible for necessary repair financing.

10. *Amend 7 CFR 3550.108(a) to include the tax service fee as an allowable loan cost exceeding security value, which is implemented under the Section 504 Loan and Grant Program which includes a subpart for application of the 306C WWD Grant:*

The Agency believes that the inclusion of the tax service fee as an allowable excess cost is practical for 504 direct loans that meet the requirement to contribute to an escrow account for taxes and insurance, which also activates the requirement of tax service fee payment at closing. The Agency proposes that amending 7 CFR 3550.108(a) to include the tax service

fee as an allowable loan cost exceeding security value will also align with applicable loan costs which may exceed security value as designated in 7 CFR 3550.59(a)(2)(i) for the 502 Direct Program.

11. *Amend 7 CFR 3550.111, to revise the threshold for requiring an appraisal based on total Section 504 indebtedness, which is implemented under the Section 504 Loan and Grant Program and includes a subpart for application of the Section 306C WWD Grant Program:*

Currently, 7 CFR 3550.111 requires an appraisal when total Section 504 indebtedness exceeds $15,000. The Agency proposes to amend 7 CFR 3550.111, to revise the threshold for requiring an appraisal based on total Section 504 indebtedness. This amendment would increase that limit to $25,000 and works in tandem with the increased Section 504 maximum loan amount of $40,000 (previously $20,000). The proposed amendment would retain the flexibility for the Loan Approval Official to determine if an appraisal is necessary when the assessed valuation by local authorities does not support a fully secured interest by the Agency and preserve the requirement to ensure adequate security value. The Agency projects that due to this proposed change, multiple benefits are likely, such as a reduction in appraisal orders, lower cost to loan applicants, and decreased application processing times.

12. A*mend 7 CFR 3550.117(d) and (e) to remove overly restrictive limitations and align with final regulatory revisions to 7 CFR 1777.21(b)(4) and (5)—Section 306C WWD Loans and Grants that eliminated these limitations and are holding these sections as reserved (effective May 2, 2023), which is implemented under the 306C WWD Grant Program as a subpart of the Section 504 Loan and Grant Program:*

The Agency has determined that alignment of 306C Colonia programs governed by 7 CFR part 1777 and 7 CFR part 3550 is necessary to ensure equal program application. The current prohibitions limit the amount of assistance applicants with varying household sizes can receive causing unnecessary hardship for larger families. These proposed rule changes will provide the Agency flexibility to clarify modest design limitations in the program handbook, if needed. The Agency proposes that amending 7 CFR 3550.117 paragraphs (d) and (e) by removing overly restrictive limitations will align with final regulatory revisions that were published at 88 FR 6611 to remove 7 CFR 1777.21(b)(4) and (5)—Section 306C WWD Loans and Grants, which were effective on May 2, 2023.

13. *Amend 7 CFR 3550.118(a) Maximum grant to an amount not to exceed ten percent of the national average area loan limit, which is implemented under the 306C WWD Grant Program as a subpart of the Section 504 Loan and Grant Program:*

The Agency proposed that amending 7 CFR 3550.118(a) by revising the maximum grant amount to not exceed ten percent of the national average area loan limit will align with the regulatory maximum lifetime assistance in the Section 504 program. This regulatory change will allow the Agency greater responsiveness to establish future maximum grant amounts for eligible applicants.

Request for Comment

Stakeholder input is vital to ensure the proposed changes in the proposed rule would support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and their customers. Comments must be submitted on or before January 19, 2024 and may be submitted electronically by going to the Federal eRulemaking Portal: *https://www.regulations.gov.* Details on how to submit comments to the Federal eRulemaking Portal are in the **ADDRESSES** section of this proposed rule.

III. Summary of Changes

The following is a summary of the Agency's intended changes in this proposed rule:

(1) Amend 7 CFR part 3550 by revising the definitions found at 7 CFR 3550.10 by:

(i) revising the definition of ''*New dwelling or unit*'';

(ii) adding a definition for ''*New construction*'' to clarify the terminology;

(ii) and revising corresponding language at 7 CFR 3550.53(d)(1)(ii), 7 CFR 3550.63(b)(1), 7 CFR 3550.63(b)(2), and 7 CFR 3550.102(e)(1).

(2) Amend 7 CFR 3550.52(d)(6) by:

(i) Revising language to remove reference to State Director when granting allowable exceptions for non-certified loan packing bodies and instead address the ability for the Agency to provide approval for packagers who operate outside of the certified process;

(ii) revising language regarding application submission requirements, and;

(iii) adding language that allows certified packaging fees to be added to the loan in excess of the area loan limit and appraised value of the house.

(3) Add language to 7 CFR 3550.56(b) and 7 CFR 3550.105 to prohibit lending in U.S. Geological Survey (USGS) Lava-Flow Hazard Zones 1 and 2.

(4) Amend 7 CFR 3550.64 by:

(i) increasing the net family asset limits before consideration of assets toward a down payment requirement; and

(ii) removing the down payment requirement when the borrower is purchasing a REO property from the Agency.

(5) Amend 7 CFR 3550.67(b)(1) to clarify that amounts included for repairs must be part of an initial purchase or finance loan to qualify for a 38-year term.

(6) Remove 7 CFR 3550.74(c)(2) and renumber the list accordingly.

(7) Remove language in 7 CFR 3550.75(b)(1)(iv) and (b)(2)(v), which states ''if determined necessary by a State Director'' and rather state ''unless waived by the Agency''.

(8) Amend 7 CFR 3550.103(e) to increase net family household assets for elderly families and non-elderly families before consideration of funds toward reduction of requested assistance.

(9) Remove 7 CFR 3550.105(b) which restricts subdividable lots.

(10) Amend 7 CFR 3550.108(a) to include the tax service fee as an allowable loan cost exceeding security value.

(11) Amend 7 CFR 3550.111 to revise the threshold for requiring an appraisal based on total Section 504 indebtedness.

(12) Amend 7 CFR 3550.117(d) and (e) to remove overly restrictive limitations and align with the removal of these regulations at 7 CFR 1777.21(b)(4) and (5)—Section 306C WWD Loans and Grants, which are now held as reserved.

(13) Amend 7 CFR 3550.118(a) by revising the maximum grant amount to not exceed ten percent of the national average area loan limit.

IV. Regulatory Information

Statutory Authority

These programs are authorized by Sections 502 and 504 of the Housing Act 1949 and by Section 306C of the Consolidated Farm and Rural Development Act and implemented under 7 CFR part 3550. Section 510(k) of Title V the Housing Act of 1949 [42 U.S.C. 1480(k)], as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12372, Intergovernmental Review of Federal Programs

These programs are not subject to the requirements of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this proposed rule.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on 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 proposed rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regards to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments and on the private sector. Under section 202 of the UMRA, Federal agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This proposed rule does not revise or impose any new information collection requirements from those approved by OMB Control number 0575–0172.

E-Government Act Compliance

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

Civil Rights Impact Analysis

RHS has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, implementation of the rule is not likely to adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status. No major civil rights impact is likely to result from this rule.

Assistance Listing

The programs affected by this regulation are listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.410, 10.417, and 10.770.

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the 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, staff office; 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/sites/default/files/documents/ad-3027.pdf,* 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 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; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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List of Subjects in 7 CFR Part 3550

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XXXV of the title 7, Code of Federal Regulations is proposed to be amended to read as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 2. Amend § 3550.10 by adding a definition for ''New construction'' and revising the definition for ''New dwelling or unit'' to read as follows:

§ 3550.10 Definitions.

* * * * *

New construction. A dwelling that will be constructed after loan closing. The Agency will monitor construction progress and approve draws during the construction period. Only new construction meeting this definition can be considered for compensation under the Section 509, Compensation for Construction Defects Program.

New dwelling or unit. A dwelling that is to be constructed prior to loan closing, or a dwelling that is less than 1 year old at the time of loan approval as evidenced by an occupancy permit, certificate of occupancy or similar document issued by the local authority and has never been occupied. A new dwelling or unit cannot be considered for compensation under the Section 509, Compensation for Construction Defects Program.

* * * * *

Subpart B—Section 502 Origination

■ 3. Amend § 3550.52 by revising paragraph (d)(6) to read as follows:

§ 3550.52 Loan Purposes.

* * * * *

(d) * * *

(6) Packaging fees resulting from the certified loan application packaging process outlined in § 3550.75. Such fees resulting from the certified loan application packaging process may be added to the loan amount in excess of the area loan limit and appraised value of the house. The Agency will determine the limit, based on factors such as the level of service provided and the prevailing cost to provide the service, and such cap will not exceed two percent of the national average area loan limit. Nominal packaging fees not resulting from the certified loan application process are an eligible cost provided the fee does not exceed a limit determined by the Agency based on the level and cost of service factors, but no greater than one half percent of the national average area loan limit; the loan application packager is a nonprofit, tax exempt partner approved by the Agency to operate outside the certified loan application packaging process; and the packager gathers and submits the information needed for the Agency to determine if the applicant is eligible along with a complete application.

* * *

■ 4. Amend § 3550.53 by revising paragraph (d)(1)(ii) to read as follows:

§ 3550.53 Eligibility Requirements.

* * * * *

(d) * * *

(1) * * *

(ii) purchase a different dwelling, if the current dwelling is deficient housing as defined in § 3550.10; or

* * * * *

■ 5. Amend § 3550.56 (b)(1) by adding a comma after the word ''ordinances'', revising paragraph (b)(2), and adding paragraph (b)(3) to read as follows:

§ 3550.56 Site Requirements.

* * * * *

(b) * * *

(1) The site must not be large enough to subdivide into more than one site under existing local zoning ordinances, and

(2) The site must not include farm service buildings, though small outbuildings such as a storage shed may be included, and

(3) The site must not be located in U.S. Geological Survey (USGS) lava-flow hazard zones 1 or 2.

■ 6. Amend § 3550.63 by revising paragraph (b) to read as follows:

§ 3550.63 Maximum Loan Limit.

* * * * *

(b) Market value limitation.

(1) The market value limitation is 100 percent of market value for existing housing, new dwellings, and new construction for which RHS will receive adequate documentation of construction quality and the source of such documentation is acceptable to RHS.

(2) The market value limitation can be increased by:

(i) Up to one percent, if RHS makes a subsequent loan for closing costs only, in conjunction with the sale of an REO property or an assumption.

(ii) The amount necessary to make a subsequent loan for repairs necessary to protect the Government's interest, and reasonable closing costs.

(iii) The amount necessary to refinance an existing borrower's RHS loans, plus closing costs associated with the new loan.

■ 7. Revise § 3550.64 to read as follows:

§ 3550.64 Down payment.

Elderly families must use any net family assets in excess of $30,000 towards a down payment on the property. Non-elderly families must use net family assets in excess of $25,000 towards a down payment on the property. Applicants may contribute assets in addition to the required down payment to further reduce the amount to be financed. Agency borrowers or applicants purchasing REO properties are not required to provide a down payment.

■ 8. Amend § 3550.67 by revising paragraph (b)(1) to read as follows:

§ 3550.67 Repayment period.

* * * * *

(b) * * *

(1) For initial loans (including acquisition and repair, but excluding initial loans solely for repairs), or

subsequent loans made in conjunction with an assumption, if the applicant's adjusted income does not exceed 60 percent of the area adjusted median income and the longer term is necessary to show repayment ability.

* * * * *

§ 3550.74 [Amended]

■ 9. Amend § 3550.74 by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

■ 10. Amend § 3550.75 by revising paragraphs (b)(1)(iv) and (b)(2)(v) to read as follows:

§ 3550.75 Certified Loan Application Packaging Process.

* * * * *

(b) * * *

(1) * * *

(iv) Submit applications via an intermediary, unless otherwise waived by the Agency.

(2) * * *

(v) Submit applications via an intermediary, unless otherwise waived by the Agency.

* * * * *

Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

■ 11. Amend § 3550.102 by revising paragraph (e)(1) to read as follows:

§ 3550.102 Grant and loan purposes.

* * * * *

(e) * * *

(1) Assist in the construction of a new dwelling or new construction.

* * * * *

■ 12. Amend § 3550.103 by revising paragraph (e) to read as follows:

§ 3550.103 Eligibility Requirements.

* * * * *

(e) *Need and use of personal resources.* Applicants must be unable to obtain financial assistance at reasonable terms and conditions from non-RHS credit or grant sources and lack the personal resources to meet their needs. Elderly families must use any net family assets in excess of $30,000 to reduce their section 504 request. Non-elderly families must use any net family assets in excess of $25,000 to reduce their section 504 request. Applicants may contribute assets in excess of the aforementioned amounts to further reduce their request for assistance. The definition of assets for the purpose of this paragraph (e) is net family assets as described in § 3550.54, less the value of the dwelling and a minimum adequate site.

* * * * *

■ 13. Amend § 3550.105 by revising paragraph (b) to read as follows:

§ 3550.105 Site Requirements.

* * * * *

(b) *Lava-flow hazard zones.* The site must not be located in U.S. Geological Survey (USGS) lava-flow hazard zones 1 or 2.

* * * * *

■ 14. Amend § 3550.108 by revising paragraph (a) to read as follows:

§ 3550.108 Security requirements (loans only).

* * * * *

(a) RHS does not require first lien position, but the total of all debts on the secured property may not exceed the value of the security, except by the amount of any required contributions to an escrow account for taxes and insurance, tax service fee, and any required appraisal fee.

* * * * *

■ 15. Revise § 3550.111 to read as follows:

§ 3550.111 Appraisals (loans only).

An appraisal is required when the total section 504 indebtedness exceeds $25,000 or whenever RHS determines that it is necessary to establish the adequacy of the security. RHS may charge an appraisal fee. Appraisals must be made in accordance with the Uniform Standards of Professional Appraisal Practices. When other real estate is taken as additional security it will be appraised if it represents a substantial portion of the security for the loan.

■ 16. Amend § 3550.117 by revising paragraphs (d) and (e) to read as follows:

§ 3550.117 WWD grant purposes.

* * * * *

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom which is modest in design.

* * * * *

■ 17. Amend § 3550.118 by revising paragraph (a) to read as follows:

§ 3550.118 Grant restrictions.

(a) *Maximum grant.* Lifetime assistance to any individual for initial or subsequent Section 306C WWD grants may not exceed ten percent of the national average area loan limit.

* * * * *

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

[FR Doc. 2023–25314 Filed 11–17–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1893; Project Identifier AD–2023–00389–A]

RIN 2120–AA64

Airworthiness Directives; FS 2001 Corp, FS 2002 Corporation, FS 2003 Corporation, Piper, and Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period for the referenced NPRM, which proposed the adoption of a new airworthiness directive (AD) for certain FS 2001 Corp, FS 2002 Corporation, FS 2003 Corporation, Piper, and Piper Aircraft, Inc. (Piper) airplanes. This NPRM invited comments concerning the proposed requirement of replacing any rudder equipped with a rudder post made from a certain carbon steel with a rudder equipped with a rudder post made from a certain low-alloy steel. This extension of the comment period is necessary to provide all interested persons an opportunity to present their views on the proposed requirements of this NPRM.

DATES: The comment period for the NPRM published on October 6, 2023, at 88 FR 69556, and scheduled to close on November 20, 2023, is extended until February 20, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2023–1893; 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.

FOR FURTHER INFORMATION CONTACT: Joseph Zuklic, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (206) 231–3858; email: *joseph.r.zuklic@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–2023–1893; Project Identifier AD–2023–00389–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Zuklic, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain FS 2001 Corp, FS 2002 Corporation, FS 2003 Corporation, Piper, and Piper Aircraft, Inc. (Piper) airplanes, as listed in the NPRM. The NPRM published in the **Federal Register** on October 6, 2023 (88 FR 69556). The NPRM was prompted by reports of two non-fatal accidents involving airplanes designed and built by Piper that were caused by broken rudder posts that structurally failed above the upper hinge in flight. Both accidents occurred in Anchorage, Alaska. The first accident occurred on June 8, 2020, and involved an FS 2003 Model PA–12 airplane and the second accident occurred on July 23, 2021, and involved an FS 2002 Model PA–14 airplane. Both airplanes sustained substantial damage when the rudder structurally failed. After examination, it was determined that the rudder posts fractured above the upper hinge, the top portion of the rudder folded over the upper tail brace wires, and the rudder posts were made from 1025 carbon steel and fractured due to fatigue. This condition, if not addressed, could result in a broken rudder and consequent reduced ability of the flight crew to maintain the safe flight and landing of the airplane.

In the NPRM, the FAA proposed to require replacing any rudder equipped with a rudder post made from 1025 carbon steel with a rudder equipped with a rudder post made from 4130N low-alloy steel.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, the FAA has received a request from the Airplane Owners and Pilots Association (AOPA), the Short Wing Piper Club, and other commenters to extend the comment period. The commenters state that the NPRM is controversial and could drive substantial costs, among other things. To be able to prepare informed and meaningful comments with coordinated consensus among its members, AOPA requested an extension of 90 days to the comment period.

The FAA agrees with the request and has determined that it is appropriate to extend the comment period for the NPRM to give all interested persons additional time to examine the proposed requirements and submit comments. The FAA has determined that extending the comment period an additional 90 days will not compromise the safety of the affected airplanes.

Extension of Comment Period

The FAA has reviewed the requests for extension of the comment period for this notice. The commenters have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. Therefore, in accordance with 14 CFR 11.47(c), the FAA has determined that an extension of the comment period for an additional 90 days to February 20, 2024 is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Docket No. FAA–2023–1893 is extended until February 20, 2024.

Because no other portion of the proposal or other regulatory information has been changed, the entire proposal is not being republished.

Issued under authority provided by 49 U.S.C. 106(g), 40113, and 44701.

Issued on November 16, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25700 Filed 11–16–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2510 and 2550

RIN 1210–AC02; ZRINs 1210–ZA32, 1210–ZA33, 1210–ZA34

Hearing on Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments

AGENCY: Employee Benefits Security Administration.

ACTION: Announcement of hearing.

SUMMARY: The Department of Labor's Employee Benefits Security Administration (EBSA) will hold a virtual public hearing on December 12 through December 13, 2023, continuing (if necessary) on December 14, 2023, for the public to provide input on the Department's proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary, proposed amendments to Prohibited Transaction Exemption (PTE) 2020–02, proposed amendments to PTE 84–24, and proposed amendments to several other existing administrative PTEs that are available to investment advice fiduciaries. EBSA welcomes requests from the general public to testify at the hearing.

DATES: The public hearing will be held on December 12 through December 13, 2023, and will continue (if necessary) on December 14, 2023, via WebEx, beginning each day at 9 a.m. EST.

Requests to testify at the hearing must be submitted on or before November 29, 2023.

ADDRESSES: Submit all requests to testify through the Federal eRulemaking Portal at *https://www.regulations.gov* at Docket ID EBSA–2023–0014. Follow the instructions for submitting requests to testify provided below. *Warning:* Do not include any personally identifiable information or confidential business information that you do not want publicly disclosed. Requests to testify are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness, Office of Regulations and Interpretations, EBSA, 202–693–8510 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2023, the Department published in the **Federal Register** a proposed rule entitled Retirement Security Rule: Definition of an Investment Advice Fiduciary.[1] If adopted as proposed, the rule would amend the Department's current regulation that defines who is a ''fiduciary'' of an employee benefit plan for purposes of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) as a result of providing investment advice to a plan or its participants or beneficiaries for a fee or other compensation, direct or indirect. The proposed rule also would amend a parallel regulation defining who is a ''fiduciary'' of a plan described in Internal Revenue Code section 4975, including an individual retirement account, for purposes of Title II of ERISA.

In the same edition of the **Federal Register**, the Department also published proposed amendments to PTE 2020–02 (entitled ''Improving Investment Advice for Workers & Retirees''), proposed amendments to PTE 84–24, and proposed amendments to several other existing administrative PTEs that are available to investment advice fiduciaries.[2] The full text and other information regarding the rule and PTE amendments is available on EBSA's website: *https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/erisa/retirement-security.*

In the **Federal Register** documents, the Department announced that it anticipated holding a public hearing approximately 45 days following publication, and that it would publish specific information regarding the date, location, and submission of requests to testify in the **Federal Register**. The Department is hereby notifying the public that it will hold a virtual public hearing on the proposed rule and associated proposed amendments to the prohibited transaction exemptions on December 12 through December 13, 2023, continuing on December 14, 2023 (if necessary), beginning each day at 9 a.m. EST, via WebEx. Registration information to access and view the hearing on WebEx will be available within a reasonable time before the hearing on EBSA's website: *https://www.dol.gov/agencies/ebsa.*

Instructions for Submitting Requests To Testify

Individuals and organizations interested in testifying at the public hearing must submit a written request to testify by November 29, 2023. Requests to testify must include:

(1) the name, title, organization, address, email address, and telephone number of the individual who would testify;

(2) if applicable, the name of the organization(s) whose views would be represented; and

(3) the date of the requester's written comment on the proposed rule or exemption proposals (if already submitted).

Any requestors with disabilities requiring special accommodations for their testimony should contact Scott Ness at the phone number listed above after submitting their written request, no later than five business days in advance of the hearing. To request ASL Interpreting or captioning services for this event, please contact *Interpreting.Services@dol.gov* at least five business days in advance of the hearing.

The Department will organize the hearing into several moderated panels. Presenters will be given 10 minutes to testify, and they should be prepared to answer questions regarding their testimony. EBSA may limit the number of presenters based on how many testimony requests it receives. In that event, EBSA will ensure that the broadest array of viewpoints on all aspects of the proposals are represented and will include in the public record all testimony requests it receives. EBSA encourages submission of written comments from all interested parties, regardless as to whether any entity provides oral testimony during the hearing.

EBSA will post a hearing agenda containing the panel compositions and presentation times no later than the close of business on December 7, 2023, on its website: *https://www.dol.gov/agencies/ebsa.*

Important note: In the event that a lapse in appropriations occurs, EBSA may not be able to post the hearing agenda on its website by close of business on December 7, 2023, as stated above. If the agenda is not posted by the close of business on December 7, 2023, the hearing is postponed. EBSA will publish a subsequent notice in the **Federal Register** announcing the updated date and time for the hearing within a reasonable time after any lapse in appropriations ends.

The hearing will be transcribed, and the Department will notify the public when the hearing transcript is available on EBSA's website at: *https://www.dol.gov/agencies/ebsa.*

Signed at Washington, DC, this 14th day of November, 2023.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–25522 Filed 11–17–23; 8:45 am]

BILLING CODE 4510–29–P

[1] 88 FR 75890.

[2] See proposed amendment to PTE 2020–02 (88 FR 75979), proposed amendment to PTE 84–24 (88 FR 76004), and proposed amendment to PTEs 75–1, 80–83, 83–1, and 86–128 (88 FR 76032).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR88

Commemorative Plaques and Urns

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations to implement new statutory authority to furnish commemorative plaques and urns for certain veterans whose cremated remains are not interred. This proposed rule is necessary to administer the new benefits, which were authorized by the ''Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020'' (the Act).

DATES: Comments must be received by VA on or before January 19, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in

a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Eric Powell, Director, Memorial Products Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: 202–632–8670 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Section 2306 of title 38, United States Code, authorizes VA's National Cemetery Administration (NCA) to furnish headstones, markers, medallions, and burial receptacles to eligible individuals. Section 2207 of the Act (Pub. L. 116–315) amended sec. 2306 by adding a new subsection (h), which created a new memorialization authority for NCA to furnish, upon request, an urn or commemorative plaque for a veteran whose cremated remains are not interred in a national cemetery, a State veterans' cemetery, a tribal cemetery, a county cemetery, or a private cemetery. Once the commemorative plaque or urn is furnished, VA is prohibited from interring that veteran in a VA national cemetery or providing a Government-furnished headstone or marker in any cemetery. 38 U.S.C. 2306(h)(2). VA proposes to add a new 38 CFR 38.634 to its regulations to implement the new statutory authority.

General Information About VA's Plaque and Urn Benefits

Proposed § 38.634(a) would provide general information about the commemorative plaque and urn benefits. Section 2207 of the Act refers to ''urns and commemorative plaques.'' We note that, although sec. 2306 uses the word ''commemorating'' in relation to the memorial headstone or marker benefit when remains are unavailable, see 38 U.S.C. 2306(b)(1), (g)(2), (i)(2), the plain language of sec. 2306(h)(1)(B) does not limit the plaque benefit to only when remains are unavailable. Therefore, we interpret the statute as using the word ''commemorative'' merely to describe the plaque as honoring the deceased veteran rather than require the unavailability of the cremated remains. Because both the urn and plaque benefit would similarly signify an individual's status as a veteran, we propose to refer to them as ''commemorative plaques and commemorative urns'' or ''commemorative plaques and urns'' in § 38.634.

Section 2306(h)(1) provides that VA will furnish a commemorative plaque or urn for an eligible veteran, upon request, ''[i]n lieu of furnishing a headstone or marker'' under subsection (d), and sec. 2306(h)(2) prohibits VA from providing a headstone or marker to an eligible veteran who receives a commemorative plaque or urn. Subsection (h), however, does not address medallions. We propose to clarify in § 38.634(a)(1) and (a)(3), respectively, that VA will furnish a commemorative plaque or urn for an eligible veteran, upon request, ''[i]n lieu of furnishing a headstone, marker, or medallion'' and that VA cannot furnish a headstone, marker, or medallion for an eligible veteran in addition to a commemorative plaque or urn.

''The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual . . . . who is buried in a private cemetery.'' 38 U.S.C. 2306(d)(1). ''In lieu of furnishing a headstone or marker under this subsection to a deceased individual'' who ''is eligible for a headstone or marker furnished under [sec. 2306(d)(1)],'' ''the Secretary may furnish, upon request, a medallion . . . to be attached to a headstone or marker furnished at private expense.'' 38 U.S.C. 2306(d)(4). Given that an individual is only eligible for a medallion if the individual is ''eligible for a headstone or marker furnished under [sec. 2306(d)(1)]'' and an individual is only eligible for a headstone or marker under sec. 2306(d)(1) if the individual is ''buried in a private cemetery,'' it follows that, to be eligible for a medallion, an individual must be ''buried in a private cemetery.'' Conversely, to be eligible for a plaque or urn, an individual must be one whose remains were ''cremated and *not* interred in . . . a private cemetery.'' 38 U.S.C. 2306(h)(3)(C) (emphasis added). Therefore, an individual cannot be eligible for a plaque or urn and a medallion simultaneously.

Section 2306(h)(2)(A) unequivocally states that, if VA provides a plaque or urn for an individual, VA ''may not provide . . . a headstone or marker'' for such individual. In other words, once VA has provided a commemorative plaque or urn for an individual, that individual is no longer ''eligible for a headstone or marker,'' and an individual who is not ''eligible for a headstone or marker'' is not eligible for a medallion. 38 U.S.C. 2306(d)(4). The reverse is also true because VA furnishes a medallion ''in lieu of'' a headstone or marker. In other words, once VA furnishes a medallion, VA cannot provide a headstone or marker. If VA is precluded from furnishing a headstone or marker, then the individual is prohibited from receiving it, and an individual who is not eligible to receive a headstone or marker cannot be provided with a plaque or urn.

VA notes an inconsistency in the statute, which does not change the above analysis. Section 2306(h)(3) describes an individual who is eligible for the urn or plaque benefit as an individual ''who is eligible for a headstone or marker furnished under [sec. 2306(d)]'' and ''whose remains were cremated and not interred . . . in a private cemetery.'' Section 2306(d) is VA's supplemental headstone or marker authority for an eligible individual defined in sec. 2306(a)(2) or (5) who is interred in a private cemetery with a privately marked grave. A supplemental headstone or marker generally signifies an individual's privately marked grave in a private cemetery as that of a veteran, which aligns with plaque and urn eligibility. For plaque and urn eligibility purposes, VA must consider the reference to sec. 2306(d) in sec. 2306(h)(3) as referring to eligible veterans defined in sec. 2306(a)(2) and (5) rather than simply considering whether an eligible veteran is interred in a private cemetery and is eligible for a Government-furnished headstone or marker under sec. 2306(d). Otherwise, sec. 2306(h)(3) would require an individual to be both buried in a private cemetery and not to be interred in a private cemetery to be eligible for the urn or plaque. VA believes this was an inadvertent oversight and that Congress's overarching intent was to limit an eligible individual listed in 2306(a)(2) or (5) to one of the following—a headstone or marker, a medallion, or a plaque or urn—as discussed above.

VA proposes to provide in § 38.634(a)(2) definitions for a ''commemorative urn'' and ''commemorative plaque.'' For purposes of these new benefits, a

''commemorative urn'' would mean a container that signifies the deceased individual's status as a veteran, in which an individual's cremated remains may be placed at private expense. A ''commemorative plaque'' would mean a tablet that signifies the deceased individual's status as a veteran.

Consistent with sec. 2306(h)(4)(A) and as discussed further below, proposed § 38.634(a)(4) would state that any commemorative plaque or urn furnished by VA would be the personal property of the applicant for such benefit.

Section 2306(h)(4)(B) provides that the Federal Government shall not be liable for any damage that occurs after the date on which the commemorative plaque or urn is furnished. As such, we propose to clarify in § 38.634(a)(5) that VA would not replace a commemorative plaque or urn unless it was damaged during shipping or contains a manufacturing deficiency or inscription error. Limiting replacements or repairs to these circumstances ensures VA would only replace the plaque or urn for problems that occurred before VA furnished the urn or plaque.

Eligibility for a Commemorative Plaque or Urn

Proposed § 38.634(b) would implement statutory requirements for the decedent intended to be memorialized by a commemorative plaque or urn. Section 2306(h)(3) defines an eligible veteran for the plaque or urn benefit as a deceased individual who served in the Armed Forces on or after April 6, 1917, who is eligible for a headstone or marker furnished under sec. 2306(d) (or would be so eligible but for the date of the death of the individual), and whose remains were cremated and not interred in a national cemetery, a State veterans' cemetery, a tribal cemetery, a county cemetery, or a private cemetery. Consistent with the discussion above, proposed § 38.634(b)(2) would add a clause to the eligibility criteria indicating that the deceased veteran must not have received a Government-furnished headstone, marker, or medallion. Again, we do not believe NCA would be authorized to provide a plaque or urn for an individual for whom NCA has previously provided a headstone, marker, or medallion.

VA proposes to revise its current definition of ''interment'' found in 38 CFR 38.600(a) to achieve the statutory intent of this new benefit. The current wording ''placement . . . of cremated remains'' may create a discrepancy as applied to the new plaque or urn benefit. We anticipate that many applicants desiring to commemorate a veteran loved one may have already ''placed'' the cremated remains on a shelf or in another location within their private residence, and we do not want to discourage them from applying. Therefore, we propose to clarify that ''interment'' includes ''the placement of cremated remains in a columbarium niche.'' Additionally, we propose to clarify that ''interment'' includes entombment of cremated remains, which VA considers as a practical equivalent of burial of remains in an above-ground setting (*e.g.,* mausoleum, columbarium). We also propose to remove the reference to ''scattering of cremated remains'' in the current definition of ''interment'' in § 38.600(a) because such language is inconsistent with the language in sec. 2306(b)(3)(D), which provides that ''the remains of an individual shall be considered to be unavailable if the individual's remains . . . were cremated and the ashes scattered without interment of any portion of the ashes.''

Section 2306(h)(3)(C) provides that the remains of an eligible individual must have been cremated and ''not interred in a national cemetery, a State veterans' cemetery, a tribal cemetery, a county cemetery, or a private cemetery.'' VA proposes that an interment in any cemetery would prevent VA from issuing a commemorative plaque or urn for that veteran. For purposes of implementing sec. 2306(h)(3)(C) in proposed § 38.634(b)(3), VA would consider interment in any Government cemetery at any level as precluding authorization for the benefit, in addition to those cemeteries explicitly listed in the statute. Without this clarification, application of this benefit would create absurd results. For example, VA would be authorized to furnish a plaque or urn for a veteran interred in a non-veteran State or non-''national'' Federal cemetery (such as a State or Federal prison cemetery), or a city or village cemetery, but would be prohibited from furnishing a plaque or urn to a veteran interred in a national cemetery, a State veterans' cemetery, or a county-owned cemetery.

For similar reasons, we would consider a ''private cemetery,'' as referenced in sec. 2306(h)(3)(C), to mean any private, non-Government property used for an interment. NCA's current practice is to provide a headstone or marker to an eligible individual interred on any private property, including a backyard. This is consistent with sec. 2306(a)(2), which authorizes VA to furnish an appropriate headstone or marker to ''any individual eligible for burial in a national cemetery (but not buried there)'' with certain exclusions. Without the language proposed in § 38.634(b)(3), *i.e.,* if ''private cemetery'' does not include any private, non-Government property used for an interment, VA would be required to furnish a commemorative plaque or commemorative urn to a veteran whose remains are interred in someone's backyard, but we would be prohibited from furnishing a plaque or urn to a veteran whose remains are interred in a church ''cemetery'' with a single gravesite. NCA's broader definition not only follows its current practice, but it aligns with an underlying intent of the statute that the plaque and urn is to be given ''in lieu of'' other benefits. These proposed standards eliminate possible absurd results and inconsistency with current practice and clarifies for potential applicants and VA the extent of VA's authority to furnish a commemorative plaque or urn benefit before they apply.

Application Process

In § 38.634(c), VA proposes to define who may apply for a commemorative plaque or urn and to provide procedures for requesting them. VA proposes to utilize existing claims processes to promote consistency in application and processing.

Section 2306(h)(4)(A) provides that a commemorative plaque or urn furnished for an eligible veteran becomes the personal property of the veteran's next of kin or such other individual as the Secretary considers appropriate. Accordingly, for the reasons stated below, VA proposes to define ''applicant'' to mean a member of the decedent's family, which includes the decedent's spouse or individual who was in a legal union as defined in § 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent.

VA is concerned about the finality of the decision to request these benefits which after benefit delivery would statutorily exclude the veteran from interment in a VA national cemetery and other memorialization. To minimize the potential for unintended forfeitures of benefits, family disputes and duplicate claims, we propose to require a commemorative plaque or urn applicant to be the family member who is authorized to make decisions about the disposition of the veteran's remains and is also knowledgeable about the other benefits that will be precluded before they submit a claim. On the claim form, we would require applicants to certify that the remains have been cremated as required by sec.

2306(h)(3)(C), that no portion of the cremated remains are interred, that they are the individual empowered to make decisions concerning disposition of the veteran and they are knowledgeable about the impacts of the claim on other VA benefits. We also propose to have applicants certify on the claim form that they are in possession of the entirety of the veteran's cremated remains. These certifications are necessary to minimize the possibility of VA receiving duplicate claims for the same veteran, reduce family disputes, and lessen the potential for a family member to unintentionally forfeit entitlement to other VA benefits.

Other required claim information would include documentation of the decedent's eligibility and the applicant's contact information and mailing address.

Executive Orders 12866, 13563 and 14094

Executive Orders 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is based on the absence of small entities' involvement with the provisions of the rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. Proposed § 38.634 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR88(P) Commemorative Plaques and Urns'' and should be sent within 60 days of publication of this rulemaking. Collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collection of information associated with this rulemaking contained in § 38.634 is described immediately following this paragraph.

- *Title:* Request for Commemorative Plaque or Urn.
- *OMB Control No: 2900–XXXX (New/TBD).*
- *CFR Provision: 38 CFR 38.634.*
- *Summary of collection of information:* The new collection of information in proposed § 38.634 would require information necessary to establish the identity of a deceased veteran to verify burial eligibility under 38 U.S.C. 2402 for purposes of furnishing a commemorative plaque or urn, as authorized under 38 U.S.C. 2306(h). It would also require information regarding the applicant's relationship to the deceased veteran, the applicant's certification as to certain factual matters, and the applicant's contact information.
- *Description of need for information and proposed use of information:* The information would be used by VA to verify an individual's service in the Armed Forces on or after April 6, 1917; eligibility for a headstone, marker, or medallion that VA has not yet furnished under sec. 2306(d); and that the individual's remains were cremated and not interred. Information regarding the applicant's relationship to the deceased veteran would be used to verify that the applicant is a family member empowered to make decisions regarding memorialization of the veteran and disposition of any remains.
- *Description of likely respondents:* Veterans' family members.

• *Estimated number of respondents per year:* 1,684.

• *Estimated frequency of responses per year:* This is a one-time collection.

• *Estimated average burden per response:* 10 minutes.

• *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 280.6667 hours (1,684 respondents × 10 minutes/60 minutes).

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $8352.64. Using VA's average annual number of 1,684 respondents, VA estimates the total information collection burden cost to be $8352.64 per year (280.6667 burden hours (1,684 respondents × 10 minutes/60 minutes) × $29.76 mean hourly wage).

* To estimate the respondents' total information collection burden cost, VA uses the Bureau of Labor Statistics (BLS) mean hourly wage for ''All Occupations'' of $29.76. This information is available at *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000.*

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 13, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 38 is proposed to be amended as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Amend § 38.600 by revising the definition of *Interment* to read as follows:

§ 38.600 Definitions.

(a) * * *

* * * * *

Interment means the burial or entombment of casketed or cremated remains, including the placement of cremated remains in a columbarium niche.

* * * * *

■ 3. Add § 38.634 to read as follows:

§ 38.634 Commemorative urns and plaques.

(a) *General.* (1) In lieu of furnishing a headstone, marker, or medallion under this part, the Department of Veterans Affairs (VA) will furnish, when requested—

(i) A commemorative urn; or

(ii) A commemorative plaque.

(2) *Definitions.* For the purposes of this section:

(i) *Commemorative urn* means a container that signifies the deceased individual's status as a veteran, in which the individual's cremated remains may be placed at private expense.

(ii) *Commemorative plaque* means a tablet that signifies the deceased individual's status as a veteran.

(3) If VA furnishes a commemorative plaque or a commemorative urn for an individual under this section, VA may not provide for such individual—

(i) A headstone, marker, or medallion; or

(ii) Any burial benefit under 38 U.S.C. 2402.

(4) Any commemorative plaque or commemorative urn furnished under this section shall be the personal property of the applicant.

(5) The Federal Government shall not be liable for any damage to a commemorative plaque or urn furnished under this section that occurs after the date on which the commemorative plaque or urn is furnished. VA will not replace a commemorative plaque or urn unless it was damaged during shipping or contains a manufacturing deficiency or inscription error.

(b) *Eligible individuals to be commemorated.* An eligible individual for purposes of this section is a deceased individual:

(1) Who served in the Armed Forces on or after April 6, 1917;

(2) Who is eligible for, but has not received, a headstone, marker, or medallion under 38 U.S.C. 2306(d) (or would be so eligible but for the date of the death of the individual); and

(3) Whose remains were cremated and not interred (see § 38.600 for definition of interment).

(c) *Application process*—(1) *Applicant.* An applicant for a commemorative plaque or urn must be a member of the veteran's family, which includes the veteran's spouse or individual who was in a legal union as defined in § 3.1702(b)(1)(ii) of this chapter with the veteran; a child, parent, or sibling of the veteran, whether biological, adopted, or step relation; and any lineal or collateral descendant of the veteran.

(2) *Application.* An applicant must submit a completed VA Form 40–1330UP, Claim for Commemorative Urn or Commemorative Plaque for Veteran's Cremains Not Interred in a Cemetery. The National Cemetery Administration will verify the decedent's eligibility for a commemorative plaque or urn. Applicants must certify that they have read a statement about other benefits to which the veteran will lose benefit rights, that the decedent's remains were cremated and are not interred at the time of application, that the applicant is a member of the decedent's family authorized to make decisions about the disposition of the decedent's remains, and that the applicant is in possession of the entirety of the cremains. Other required claim information will include documentation of the decedent's eligibility and the applicant's contact information and mailing address. VA's duty to notify claimants of necessary information or evidence under § 3.159(b) of this chapter and duty to assist claimants in obtaining evidence under § 3.159(c) of this chapter will apply.

[FR Doc. 2023–25595 Filed 11–17–23; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is amending its Postage Evidencing Systems regulations to ensure compliance for Automated Clearinghouse or ACH payment transactions and to clarify obligations related to all payments. These changes require the applicable resetting company (RC) and PC Postage provider to comply with the latest NACHA rules published by the North American Clearing House Association for ACH transactions. These responsibilities include providing a written statement signed by an executive officer of the

company attesting to that compliance at least annually. These changes also require the applicable RC and PC Postage provider to obtain and store an agreement with each customer utilizing ACH debit as a payment method. Failure to comply may result in revocation of access to applicable Postal Service ACH programs.

DATES: Comments must be received on or before December 20, 2023.

ADDRESSES: Mail or deliver comments to the Banking Manager, United States Postal Service, 475 L'Enfant Plaza SW, RM. 8134, Washington, DC 20260. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, to: *PCFederalRegister@usps.gov,* with a subject line of ''[Date], Authorization to Manufacture and Distribute Postage Evidencing Systems.'' Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Douglas Graham, Banking Manager, United States Postal Service, 475 L'Enfant Plaza SW, RM. 8134, Washington, DC 20260, (202) 268–2188.

SUPPLEMENTARY INFORMATION: In accordance with 39 U.S.C. 416(e)(2), the Postal Service invites public comment on the following proposed amendments to the Code of Federal Regulations.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Amend § 501.15 by revising paragraph (g) to read as follows:

§ 501.15 Computerized Meter Resetting System.

* * * * *

(g) The RC must reimburse the Postal Service for returned payments promptly, comply with NACHA rules, and maintain customer ACH debit agreements.

(1) *Financial responsibility for returned payments.* The RC is required to reimburse the Postal Service upon request for any returned payments. The RC must, upon first becoming aware of a returned payment, immediately lock the customer's CMRS account to prevent a meter reset until the RC receives confirmation of payment for the returned payment. If a fee, penalty or fine is assessed against the Postal Service for returned payments from an RC's customer, the Postal Service may request reimbursement for such fee, penalty or fine from the RC. The RC is required to remit the amount of the returned payment to the Postal Service plus the reimbursement request, to the extent applicable, within ten (10) banking days. Invoices will be created monthly for returns and/or applicable penalties or fines incurred for the previous month. The ten (10) banking days will start once the invoice is mailed. The RC has discretion to decide whether to charge its customer for any such reimbursement costs (of fees, penalties, or fines) the RC pays to the Postal Service in connection with the customer's returned payment.

(2) *Responsibility to comply with NACHA rules.* The RC is required to comply with the latest NACHA rules published by the North American Clearing House Association. Each RC must provide a written statement signed by an executive officer of the company attesting to that compliance at least annually. If the RC cannot provide that written statement attesting to compliance due to identified areas of non-compliance, the RC must provide to the USPS within 30 days a written plan describing its prioritized approach, including milestone dates, toward achieving compliance within a mutually agreed period. USPS will provide specific written guidance separately if requested. Failure to comply may result in revocation of access to applicable USPS ACH programs.

(3) *Responsibility to maintain customer ACH agreements.* The RC must obtain and store an agreement with each and every customer utilizing ACH debit as a payment method. The customer agreement must authorize the RC to debit the designated bank account identified to pay for postage through the USPS account of its choice. The agreement must have at least the following elements: Company Name (if applicable), Name and Title and Address of the person entering into the agreement, Contact Information (Phone Number, Fax Number and eMail Address as applicable), Date and Signature (or appropriate electronic signature evidence) of Agreement, Customer's Bank Name and Address, Bank Routing Number, Account Number and Account Type (Checking or Savings, Business or Personal) being agreed to transact upon, an Attestation that the person submitting the form is authorized to act on behalf of the account, and Termination Date and Signature (or appropriate electronic signature evidence) of the Agreement (if applicable). The agreement must be stored for at least two years after termination of the agreement, must be easily reproducible, and must be provided electronically to the Postal Service within three business days of electronic written request by the Postal Service in a format that can be easily and readily used for all NACHA and ACH related purposes including, without limitation, audit and defense of claims. USPS will provide specific written guidance separately if requested. Failure to comply may result in revocation of access to applicable Postal Service ACH programs.

* * * * *

■ 3. Amend § 501.16 by revising paragraph (d) to read as follows:

§ 501.16 PC postage payment methodology.

* * * * *

(d) The provider must reimburse the Postal Service for returned payments promptly, comply with NACHA rules, and maintain customer ACH agreements.

(1) *Financial responsibility for returned payments.* The provider must reimburse the Postal Service upon request for any returned payments. The provider must, upon first becoming aware of a returned payment, immediately lock the customer account to prevent resetting the account until the provider receives confirmation of payment for the returned payment. If a fee, penalty or fine is assessed against the Postal Service for returned payments from a provider's customer, the Postal Service may request reimbursement for such fee, penalty or fine from the provider. The provider is required to remit the amount of the returned payment plus the amount of the reimbursement request, to the extent applicable, to the Postal Service within ten (10) banking days. Invoices will be created monthly for returns and/or applicable penalties or fines incurred for the previous month. The ten (10) banking days will start once the invoice is mailed. The provider has discretion to decide whether to charge its customer for any such reimbursement costs (of

fees, penalties or fines) the provider pays to the Postal Service in connection with the customer's returned payment.

(2) *Responsibility to comply with NACHA rules.* The provider is required to comply with the latest NACHA rules published by the North American Clearing House Association. Each provider must provide a written statement signed by an executive officer of the company attesting to that compliance at least annually. If the provider cannot provide that written statement attesting to compliance due to identified areas of non-compliance, the PC provider must provide to the Postal Service within 30 days a written plan describing its prioritized approach, including milestone dates, toward achieving compliance within a mutually agreed period. The Postal Service will provide specific written guidance separately if requested. Failure to comply may result in revocation of access to applicable Postal Service ACH programs.

(3) *Responsibility to maintain customer ACH agreements.* The provider must obtain and store an agreement with each and every customer utilizing ACH debit as a payment method. The customer agreement must authorize the provider to debit the designated bank account identified to pay for postage through the Postal Service account of its choice. The agreement must have at least the following elements: Company Name (if applicable), Name and Title and Address of the person entering into the agreement, Contact Information (Phone Number, Fax Number and eMail Address as applicable), Date and Signature (or appropriate electronic signature evidence) of Agreement, Customer's Bank Name and Address, Bank Routing Number, Account Number and Account Type (Checking or Savings, Business or Personal) being agreed to transact upon, an Attestation that the person submitting the form is authorized to act on behalf of the account, and Termination Date and Signature (or appropriate electronic signature evidence) of the Agreement (if applicable). The agreement must be stored for at least two years after termination of the agreement, must be easily reproducible, and must be provided electronically to the Postal Service within three business days of electronic written request by the Postal Service in a format that can be easily and readily used for all NACHA and ACH related purposes including, without limitation, audit and defense of claims. The Postal Service will provide specific written guidance separately if requested. Failure to comply may result in revocation of access to applicable Postal Service ACH programs.

(4) *Credit cards.* Unless otherwise established in a written agreement between the Postal Service and the provider, the provider is fully responsible for its own credit card compliance.

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–25628 Filed 11–17–23; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0187; FRL–11554–03–R1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Regional Haze State Implementation Plan (SIP) revision submitted by New Hampshire on May 5, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule for the program's second implementation period. New Hampshire's SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act.

DATES: Written comments must be received on or before December 20, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA- at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

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I. What action is the EPA proposing?

On May 5, 2022, supplemented on September 21, 2023,[1] the New Hampshire Department of Environmental Services (NHDES) submitted a revision to its SIP to address regional haze for the second implementation period. NHDES made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA is proposing to find that the New Hampshire regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and thus proposes to approve New Hampshire's submission into its SIP.

II. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[2] CAA 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal areas (hereinafter referred to as ''Class I areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA 169B. The EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308,[3] on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[4]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2);[5] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR at 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area''; therefore, all states must submit regional haze SIPs.[6] Id. at 35721.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states

[1] NH included a corrected Appendix W in a supplemental submission on September 21, 2023.

[2] Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

[3] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

[4] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm^{-1}). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is 10 ln (b^{ext})/10 Mm^{-1}). 40 CFR 51.301.

[5] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment ''in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[6] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b), (d)(3).

containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five-year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.[7] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' long-term strategies must include the ''enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s)[8] (FLMs) responsible for each Class I area according to the requirements in CAA 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify States' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[9] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[10] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[11] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[12]

As previously explained in the 2021 Clarifications Memo, EPA intends the second implementation period of the regional haze program to secure

[7] EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets, but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

[8] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.'' 40 CFR 51.301.

[9] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[10] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[11] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional* The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[12] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards and Prevention of Significant Deterioration programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.[13]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. In order to address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[14] which include representation from state and tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU), one of the five RPOs described above, is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member states and tribal governments (listed alphabetically) include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont. The Federal partner members of MANE–VU are EPA, U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS).

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in § 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis[15] and (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. See 40 CFR 51.308(f)(2). Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors''[16] that states must consider in developing their long-term strategies. A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that

[13] See, *e.g.,* H.R. Rep No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas'').

[14] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this notice, the terms RPO and MJO are synonymous.

[15] EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

[16] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA 169(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if disapproves the SIP, the Agency must promulgate a federal implementation plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR at 35720–22, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. EPA's 2018 Visibility Tracking Guidance [17] provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR at 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[18] 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[19] by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.[20] Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term

[17] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf.*

[18] This notice also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[19] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[20] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. *See, e.g.,* 82 FR at 3093.

strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each state will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[21]

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[22] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate.'' 82 FR at 3091. Thus, for each source it has selected for four-factor analysis,[23] a state must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that ''[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021

[21] Similarly, in responding to comments on the 2017 RHR Revisions EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

[22] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[23] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR at 3088. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.,* new emission reduction measures for sources), EPA explained that states should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a state should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[24] The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP.[25] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the long-term strategy in order to prevent future emission increases and future visibility impairment. EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.[26] That is, a state's decisions about the emission

[24] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

[25] States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to EPA for inclusion in their SIPs but are not required to do so. See, *e.g.,* 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[26] *See Arizona ex rel. Darwin* v. *U.S. EPA,* 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *U.S. EPA,* 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA,* 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); *cf. also Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 485, 490 (2004); *Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 165 (3d Cir. 2015);.

reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [27] that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses state boundaries, § 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See *id.;* 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR at 3091. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii)–(iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.[28] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and show no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR at 3097–98.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the

[27] The five ''additional factors'' for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

[28] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

national visibility goal, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' See 82 FR at 3093, 3099–3100; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii), (iii). *S*ection 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency's evaluation of a SIP revision.[29] All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51 subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.[30]

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [31] Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR at 3119, January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

[29] See ''Step 8: Additional requirements for regional haze SIPs'' in 2019 Regional Haze Guidance at 55.

[30] *Id.*

[31] EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii)(B), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

Clean Air Act section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of New Hampshire's Regional Haze Submission for the Second Implementation Period

A. Background on New Hampshire's First Implementation Period SIP Submission

NHDES submitted its regional haze SIP for the first implementation period to the EPA on January 9, 2010, and supplemented it on January 14, 2011, and August 14, 2011. The EPA approved New Hampshire's first implementation period regional haze SIP submission on August 22, 2012 (77 FR 50602). Pursuant to 40 CFR 51.308(g), New Hampshire was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on December 16, 2014. The EPA approved the progress report into the New Hampshire SIP on October 12, 2016 (81 FR 70360).

B. New Hampshire's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on May 5, 2022, NHDES submitted a revision to the New Hampshire SIP to address its regional haze obligations for the second implementation period, which runs through 2028. The New Hampshire submission also included the revised New Hampshire's Code of Administrative Rules Env-A 2300, ''Mitigation of Regional Haze,'' which contains updated emissions limits for certain facilities located in the State. New Hampshire made a draft Regional Haze SIP submission available for public comment on November 4, 2019, with a second notice made available for public comment on December 10, 2021. A public hearing was also held on February 23, 2022. NHDES has included the public comments and its responses to those comments in the submission.

The following sections describe New Hampshire's SIP submission, including analyses conducted by MANE–VU and New Hampshire's determinations based on those analyses, New Hampshire's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at its Class I areas and nearby Class I areas. This notice also contains EPA's evaluation of New Hampshire's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes ''an 'extremely

low triggering threshold' in determining which States should submit SIPs for regional haze.'' 64 FR at 35721. In concluding that each of the contiguous 48 states and the District of Columbia meet this threshold,[32] the EPA relied on ''a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze,'' *id.,* including modeling studies that ''preliminarily demonstrated that each State not having a Class I area had emissions contributing to impairment in at least one downwind Class I area.'' *Id.* at 35722. In addition to the technical evidence supporting a conclusion that each state contributes to *existing* visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to ''establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.'' *Id.* at 35721. Thus, the EPA concluded that the agency's ''statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas.'' *Id.* at 35722. EPA's 2017 revisions to the RHR did not disturb this conclusion. *See* 82 FR at 3094.

New Hampshire has two mandatory Class I Federal areas within its borders, the Great Gulf Wilderness Area and the Presidential Range-Dry River Wilderness Area. Visibility monitoring in these areas is accomplished with instruments located at a single site at Camp Dodge. This monitoring station represents both Class 1 wilderness areas, and for this reason, both of New Hampshire's Federal Class I areas are often referred to collectively as simply the Great Gulf Wilderness. For the second implementation period, MANE–VU performed technical analyses [33] to help assess source and state-level contributions to visibility impairment and the need for interstate consultation. MANE–VU used the results of these analyses to determine which states' emissions ''have a high likelihood of affecting visibility in MANE–VU's Class I areas.'' [34] Similar to metrics used in the first implementation period,[35] MANE–VU used a greater than 2 percent of sulfate plus nitrate emissions contribution criteria to determine whether emissions from individual jurisdictions within the region affected visibility in any Class I areas. The MANE–VU analyses for the second implementation period used a combination of data analysis techniques, including emissions data, distance from Class I areas, wind trajectories, and CALPUFF dispersion modeling. Although many of the analyses focused only on SO_2 emissions and resultant particulate sulfate contributions to visibility impairment, some also incorporated NO_X emissions to estimate particulate nitrate contributions.

One MANE–VU analysis used for contribution assessment was CALPUFF air dispersion modeling. The CALPUFF model was used to estimate sulfate and nitrate formation and transport in MANE–VU and nearby regions originating from large electric generating unit (EGU) point sources and other large industrial and institutional sources in the eastern and central United States. Information from an initial round of CALPUFF modeling was collated for the 444 EGUs that were determined to warrant further scrutiny based on their emissions of SO_2 and NO_X. The list of EGUs was based on an enhanced ''Q/d'' analysis [36] that considered recent SO_2 emissions in the eastern United States and an analysis that adjusted previous 2002 MANE–VU CALPUFF modeling by applying a ratio of 2011 to 2002 SO_2 emissions. This list of sources was then enhanced by including the top five SO_2 and NOx emission sources for 2011 for each state included in the modeling domain. A total of 311 EGU stacks (as opposed to individual units) were included in the CALPUFF modeling analysis. Initial information was also collected on the 50 industrial and institutional sources that, according to 2011 Q/d analysis, contributed the most to visibility impact in each Class I area. The ultimate CALPUFF modeling run included a total of 311 EGU stacks and 82 industrial facilities. The summary report for the CALPUFF modeling included the top 10 most impacting EGUs and the top 5 most impacting industrial/institutional sources for each Class I area and compiled those results into a ranked list of the most impacting EGUs and industrial sources at MANE–VU Class I areas.[37]

The CALPUFF modeling results identified GSP Merrimack (units 1 and 2) and Newington as New Hampshire's EGU emissions sources impacting Great Gulf above a 1 Mm^{-1} light extinction impact threshold. NHDES also performed CALPUFF screening on several other New Hampshire emission sources. The selection of emission units for modeling was based on the MANE–VU EGU and peaking unit criteria, the MANE–VU industrial, commercial, and institutional (ICI) facility criteria, and requests from EPA and the National Park Service through consultation. The New Hampshire sources which had maximum estimated visibility extinction above 1 Mm^{-1} at federal Class I areas were included in the list of New Hampshire sources for further analysis.[38]

The second MANE–VU contribution analysis used a meteorologically weighted Q/d calculation to assess states' contributions to visibility impairment at MANE–VU Class I areas.[39] This analysis focused predominantly on SO_2 emissions and used cumulative SO_2 emissions from a source and a state for the variable ''Q,'' and the distance of the source or state to the IMPROVE monitor receptor at a Class I area as ''d.'' The result is then multiplied by a constant (C_i), which is determined based on the prevailing wind patterns. MANE–VU selected a meteorologically weighted Q/d analysis as an inexpensive initial screening tool that could easily be repeated to determine which states, sectors, or sources have a larger relative impact and warrant further analysis. Although MANE–VU did not originally estimate nitrate impacts, the MANE–VU Q/d analysis was subsequently extended to

[32] EPA determined that ''there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columba may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area.'' 64 FR at 35721. Hawaii, Alaska, and the U.S. Virgin Islands must also submit regional haze SIPs because they contain Class I areas.

[33] The contribution assessment methodologies for MANE–VU Class I areas are summarized in appendix E of the docket. ''Selection of States for MANE–VU Regional Haze Consultation (2018).''

[34] *Id.*

[35] See docket EPA–R01–OAR–2023–0187 for MANE–VU supporting materials.

[36] ''Q/d'' is emissions (Q) in tons per year, typically of one or a combination of visibility-impairing pollutants, divided by distance to a class I area (d) in kilometers. The resulting ratio is commonly used as a metric to assess a source's potential visibility impacts on a particular class I area.

[37] See appendix C in the Docket, ''2016 MANE–VU Source Contribution Modeling Report, CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources'' and appendix D ''MANE–VU TSC'', (April 2016) and ''MANE–VU Updated Q/d*C Contribution Assessment.''

[38] See table 2–6 ''New Hampshire Visibility Impairing EGU and ICI Point Sources'' in the NH Regional Haze SIP—Final May 2022.

[39] See appendix D, ''Contribution Assessment 2006—Final.''

account for nitrate contributions from NO_X emissions and to approximate the nitrate impacts from area and mobile sources. MANE–VU therefore developed a ratio of nitrate to sulfate impacts based on the previously described CALPUFF modeling and applied those to the sulfate Q/d results in order to derive nitrate contribution estimates. Several states did not have CALPUFF nitrate to sulfate ratio results, however, because there were no point sources modeled with CALPUFF.

In order to develop a final set of contribution estimates, MANE–VU weighted the results from both the Q/d and CALPUFF analyses. The MANE–VU mass-weighted sulfate and nitrate contribution results were reported for the MANE–VU Class I areas. (The Q/d summary report included results for several non-MANE–VU areas as well). If a state's contribution to sulfate and nitrate concentrations at a particular Class I area was 2 percent or greater, MANE–VU regarded that state as contributing to visibility impairment in that area. According to MANE–VU's analyses, sources in New Hampshire have been found to contribute to visibility impairment at its own Class I areas, Acadia National Park and Moosehorn Wilderness Area in Maine, and, by extension, Roosevelt-Campobello International Park in New Brunswick.

As explained above, the EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' 64 FR at 35721, and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility-impairing pollutants from a state, as opposed to emissions of a particular pollutant or emissions from a certain set of sources. Consistent with these requirements, the 2019 Guidance makes it clear that ''all types of anthropogenic sources are to be included in the determination'' of whether a state's emissions are reasonably anticipated to result in any visibility impairment. 2019 Guidance at 8.

First, as an aside, the screening analyses on which MANE–VU relied are useful for certain purposes. MANE–VU used information from its technical analysis to rank the largest contributing states to sulfate and nitrate impairment in seven Class I areas in the MANE–VU region and three additional, nearby Class I areas.[40] The rankings were used to determine upwind states that were deemed important to include in state-to-state consultation (based on an identified impact screening threshold). Additionally, large individual source impacts were used to target MANE–VU control analysis ''Asks'' [41] of states and sources both within and upwind of MANE–VU.[42] The EPA finds the nature of the analyses generally appropriate to support decisions on states with which to consult. However, we have cautioned that source selection methodologies that target the largest regional contributors to visibility impairment across multiple states may not be reasonable for a particular state if it results in few or no sources being selected for subsequent analysis. 2021 Clarifications Memo at 3.

With regard to the analysis and determinations regarding New Hampshire's contribution to visibility impairment at out-of-state Class I areas, the MANE–VU technical work focuses on the magnitude of visibility impacts from certain New Hampshire emissions on its Class I area and other nearby Class I areas. However, the analyses did not account for all emissions and all components of visibility impairment (*e.g.,* primary PM emissions, and impairment from fine PM, elemental carbon, and organic carbon). In addition, Q/d analyses with a relatively simplistic accounting for wind trajectories and CALPUFF applied to a very limited set of EGUs and major industrial sources of SO_2 and NOx are not scientifically rigorous tools capable of evaluating contribution to visibility impairment from *all* emissions in a state. The EPA does agree that the contribution to visibility impairment from New Hampshire's emissions at nearby out-of-state Class I areas is smaller than that from numerous other MANE–VU states.[43] And while some MANE–VU states noted that the contributions from several states outside the MANE–VU region are significantly larger than its own, we again clarify that each state is obligated under the CAA and RHR to address regional haze visibility impairment resulting from emissions from within the state, irrespective of whether another state's contribution is greater. See 2021 Clarifications Memo at 3. Additionally, we note that the 2 percent or greater sulfate-plus-nitrate threshold used to determine whether New Hampshire emissions contribute to visibility impairment at a particular Class I area may be higher than what EPA believes is an ''extremely low triggering threshold'' intended by the statute and regulations. In sum, based on the information provided, it is clear that emissions from New Hampshire contribute to visibility impairment in the Class I areas in Maine, New Brunswick, and New Hampshire and have relatively small contributions to the other nearby Class I areas. EPA generally agrees with this conclusion. However, due to the low triggering threshold implied by the Rule and the lack of rigorous modeling analyses, we do not necessarily agree with the level of the State's 2% contribution threshold as a general matter.

Regardless, we note that New Hampshire did determine that sources and emissions within the state contribute to visibility impairment at both in-state wildernesses and three out-of-state Class I areas. Furthermore, the state took part in the emission control strategy consultation process as a member of MANE–VU. As part of that process, MANE–VU developed a set of emissions reduction measures identified as being necessary to make reasonable progress in the seven MANE–VU Class I areas. This strategy consists of six Asks for states within MANE–VU and five Asks for states outside the region that were found to impact visibility at Class I areas within MANE–VU.[44] New Hampshire's submission discusses each of the Asks and explains why or why not each is applicable and how it has complied with the relevant components of the emissions control strategy MANE–VU has laid out for its states. New Hampshire worked with MANE–VU to determine potential reasonable measures that could be implemented by 2028, considering the cost of compliance, the time necessary for

[40] The Class I areas analyzed were Acadia National Park in Maine, Brigantine Wilderness in New Jersey, Great Gulf Wilderness and Presidential Range—Dry River Wilderness in New Hampshire, Lye Brook Wilderness in Vermont, Moosehorn Wilderness in Maine, Roosevelt-Campobello International Park in New Brunswick, Shenandoah National Park in Virginia, James River Face Wilderness in Virginia, and Dolly Sods/Otter Creek Wildernesses in West Virginia.

[41] As explained more fully in section IV.E.a, MANE–VU refers to each of the components of its overall strategy as an ''Ask ''of its member states.

[42] The MANE–VU consultation report (Appendix G) explains that ''[t]he objective of this technical work was to identify states and sources from which MANE–VU will pursue further analysis. This screening was intended to identify which states to invite to consultation, not a definitive list of which states are contributing.''

[43] Because MANE–VU did not include all New Hampshire's emissions or contributions to visibility impairment in its analysis, we cannot definitively state that New Hampshire's contribution to visibility impairment is not the most significant. However, that is very likely the case.

[44] See appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

compliance, the energy and non-air quality environmental impacts, and the remaining useful life of any potentially affected sources. As discussed in further detail below, the EPA is proposing to find that New Hampshire has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(2) related to the development of a long-term strategy. Thus, although we have concerns regarding some aspects of MANE–VU's technical analyses supporting states' contribution determinations as a general matter, we propose to find that New Hampshire has nevertheless satisfied the applicable requirements for making reasonable progress towards natural visibility conditions in Class I areas that may be affected be emissions from the state.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

The Great Gulf and Presidential Range—Dry River Wilderness areas have 2000–2004 baseline visibility conditions of 7.65 deciviews on the 20% clearest days and 21.88 deciviews on the 20% most impaired days.[45] New Hampshire calculated an estimated natural background visibility of 3.73 deciviews on the 20% clearest days and 9.78 deciviews on the 20% most impaired days for the Great Gulf and Presidential Range—Dry River Wilderness areas.[46] The current visibility conditions, which are based on 2015–2019 monitoring data, were 4.69 deciviews on the clearest days and 12.33 deciviews on the most impaired days,[47] which represents an improvement from the baseline period of 2.96 deciviews on the 20% clearest days and 9.55 deciviews on the 20% most impaired days.[48] In addition, current visibility conditions are 0.96 and 2.55 deciviews greater than natural conditions on the respective sets of days.[49] New Hampshire calculated an annual URP of 0.202 deciviews needed to reach natural visibility on the 20% most impaired days.[50] New Hampshire noted that, at 12.33 deciviews, current visibility conditions on the most impaired days in the Great Gulf/Presidential-Dry River Wilderness Area are already below the URP glidepath for both 2018—the end of the first SIP planning period—and 2028—the end of the second SIP planning period.[51] New Hampshire has not proposed any adjustments to the URP to account for impacts from anthropogenic sources outside the United States or from wildland prescribed fires. EPA is proposing to find that New Hampshire has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(1) related to the calculations of baseline, current, and natural visibility conditions; progress to date; and the uniform rate of progress for the second implementation period.

E. Long-Term Strategy for Regional Haze

a. New Hampshire's Response to the Six MANE–VU Asks

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA section 169A(b)(2)(B). As explained in the Background section of this notice, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategies, a state must also consider the five additional factors in § 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(i).

In this section of the NPRM, EPA summarizes how New Hampshire addresses the requirements of § 51.308(f)(2)(i), including a discussion of the six Asks developed by MANE–VU and how New Hampshire addressed each. In section IV.E.b of the NPRM, EPA evaluates New Hampshire's compliance with the requirements of § 51.308(f)(2)(i).

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under § 51.308(f). Where an RPO has performed source selection and/or four-factor analyses (or considered the five additional factors in § 51.308(f)(2)(iv)) for its member states, those states may rely on the RPO's analyses for the purpose of satisfying the requirements of § 51.308(f)(2)(i) so long as the states have a reasonable basis to do so and all state participants in the RPO process have approved the technical analyses. 40 CFR 51.308(f)(2)(iii). States may also satisfy the requirement of § 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably

[45] See ''Table 4–1: Baseline Visibility for the 20% Clearest and 20% Worst Days for the Baseline Period in New Hampshire Class I Areas'' in the NH Regional Haze SIP submission—Final (May 2022).

[46] See ''Table 4–3: Comparison of Natural, Baseline, and Current Visibility for the 20% Clearest and 20% Most Impaired Days in New Hampshire Class I Areas'' in the NH Regional Haze SIP submission—Final (May 2022).

[47] See ''Table 4–2: Current Visibility for the 20% Clearest and 20% Most Impaired Days during 2015–2019 in New Hampshire Class I Areas'' in the NH Regional Haze SIP submission—Final (May 2022).

[48] NH Regional Haze SIP submission—Final, at 39 (May 2022).

[49] See ''Table 4–4: Current Visibility (2015–2019) vs. Natural Visibility Conditions (dv)'' in the NH Regional Haze SIP submission—Final (May 2022).

[50] See ''Table 4–6: Baseline, Current and Reasonable Progress Goal Haze Index Levels for New Hampshire's Class I Areas'' in the NH Regional Haze SIP submission—Final (May 2022).

[51] NH Regional Haze SIP submission—Final, at 40–41 (May 2022).

anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

New Hampshire is a member of the MANE–VU RPO and participated in the RPO's regional approach to developing a strategy for making reasonable progress towards the national visibility goal in the MANE–VU Class I areas. MANE–VU's strategy includes a combination of: (1) Measures for certain source sectors and groups of sectors that the RPO determined were reasonable for states to pursue, and (2) a request for member states to conduct four-factor analyses for individual sources that it identified as contributing to visibility impairment. MANE–VU refers to each of the components of its overall strategy as an Ask of its member states. On August 25, 2017, the Executive Director of MANE–VU, on behalf of the MANE–VU states and tribal nations, signed a statement that identifies six emission reduction measures that comprise the Asks for the second implementation period.[52] The Asks were ''designed to identify reasonable emission reduction strategies that must be addressed by the states and tribal nations of MANE–VU through their regional haze SIP updates.'' [53] The statement explains that ''[i]f any State cannot agree with or complete a Class I State's Asks, the State must describe the actions taken to resolve the disagreement in the Regional Haze SIP.'' [54]

MANE–VU's recommendations as to the appropriate control measures were based on technical analyses documented in the RPO's reports and included as appendices to or referenced in New Hampshire's regional haze SIP submission. One of the initial steps of MANE–VU's technical analysis was to determine which visibility-impairing pollutants should be the focus of its efforts for the second implementation period. In the first implementation period, MANE–VU determined that sulfates were the most significant visibility impairing pollutant at the region's Class I areas. To determine the impact of certain pollutants on visibility at Class I areas for the purpose of second implementation period planning, MANE–VU conducted an analysis comparing the pollutant contribution on the clearest and most impaired days in the baseline period (2000–2004) to the most recent period (2012–2016) [55] at MANE–VU and nearby Class I areas. MANE–VU found that while SO_2 emissions were decreasing and visibility was improving, sulfates still made up the most significant contribution to visibility impairment at MANE–VU and nearby Class I areas. According to the analysis, NO_X emissions have begun to play a more significant role in visibility impacts in recent years as SO_2 emissions have decreased. The technical analyses used by New Hampshire are included in their submission and are as follows:

- 2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas (Appendix L NH);
- Impact of Wintertime SCR/SNCR Optimization on Visibility Impairing Nitrate Precursor Emissions. November 2017. (Appendix Q NH);
- High Electric Demand Days and Visibility Impairment in MANE–VU. December 2017. (Appendix R NH);
- Benefits of Combined Heat and Power Systems for Reducing Pollutant Emissions in MANE–VU States. March 2016. (Appendix S NH);
- 2016 MANE–VU Source Contribution Modeling Report—CALPUFF Modeling of Large Electrical Generating Units and Industrial Sources April 4, 2017 (Appendix C NH);
- Contribution Assessment Preliminary Inventory Analysis. October 10, 2016. (Appendix D NH);
- Four-Factor Data Collection Memo. March 2017. (Appendix K NH);
- Status of the Top 167 Stacks from the 2008 MANE–VU Ask. July 2016. (Appendix M NH).

To support development of the Asks, MANE–VU gathered information on each of the four statutory factors for six source sectors it determined, based on an examination of annual emission inventories, ''had emissions [of SO_2 and/or NO_X] that were reasonabl[y] anticipated to contribute to visibility degradation in MANE–VU:'' electric generating units (EGUs), industrial/commercial/institutional boilers (ICI boilers), cement kilns, heating oil, residential wood combustion, and outdoor wood combustion.[56] MANE–VU also collected data on individual sources within the EGU, ICI boiler, and cement kiln sectors.[57] Information for the six sectors included explanations of technically feasible control options for SO_2 or NO_X, illustrative cost-effectiveness estimates for a range of model units and control options, sector-wide cost considerations, potential time frames for compliance with control options, potential energy and non-air-quality environmental impacts of certain control options, and how the remaining useful lives of sources might be considered in a control analysis.[58] Source-specific data included SO_2 emissions [59] and existing controls [60] for certain existing EGUs, ICI boilers, and cement kilns. MANE–VU considered this information on the four factors as well as the analyses developed by the RPO's Technical Support Committee when it determined specific emission reduction measures that were found to be reasonable for certain sources within two of the sectors it had examined—EGUs and ICI boilers. The Asks were based on this analysis and looked to optimize the use of existing controls, have states conduct further analysis on EGU or ICI boilers with considerable visibility impacts, implement low sulfur fuel standards, or lock-in lower emission rates.

MANE–VU Ask 1 is ''ensuring the most effective use of control technologies on a year-round basis'' at EGUs with a nameplate capacity larger than or equal to 25 megawatts (MW) with already installed NO_X and/or SO_2 controls.[61] Twelve EGUs at seven stationary sources in New Hampshire were identified as meeting the criteria of Ask 1. These sources include Burgess BioPower (EU01), Essential Power Newington (EU01 and EU02), Granite Ridge Energy (EU01 and EU02), Stored Solar Tamworth (EU01), GSP Merrimack Station (MK1 and MK2), GSP Schiller Station (SR4, SR5, and SR6), and GSP Newington Station (NT1). Additionally, the National Park Service identified Wheelabrator Concord as a facility of interest. NHDES determined that no further limitations as a result of MANE–VU Ask 1 were required of these sources.

New Hampshire explained that Burgess BioPower's operation was subject to Nonattainment New Source Review (NNSR) for NO_X at the time of the facility's initial permitting; hence, the NO_X limit represents the Lowest Available Emission Rate (LAER). This limit is incorporated into Title V Operating Permit TV–0065, issued on December 24, 2020, which limits NO_X

[52] See appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

[53] *Id.*

[54] *Id.*

[55] The period of 2012–2016 was the most recent period for which data were available at the time of analysis. NH also included 2015–2019 data, discussed above in part D of this section.

[56] See appendix K ''MANE–VU Four Factor Data Collection Memo at 1, March 30, 2017.''

[57] See appendix L ''2016 Updates to the Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas, Jan. 31, 2016.''

[58] *Id.*

[59] See appendix K ''Four Factor Data Collection Memo.''

[60] See appendix M ''Status of the Top 167 Stacks from the 2008 MANE–VU Ask. July 2016.''

[61] See appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

emissions from the biomass boiler to 0.060 lbs/MMBtu on a 30-day rolling average, based on the use of Selective Catalytic Reduction (SCR) technology and SO_2 emissions to 0.012 lbs/MMBtu.

Essential Power Newington was subject to NNSR for NO_X at the time of initial permitting in July 2010; these NO_X limits were established as LAER-based limits. The Newington units use dry low NO_X (DLN) combustion combined with SCR (as well as water injection during limited firing on ultra-low sulfur fuel oil). The facility is required by permit to use inherently low sulfur fuels (natural gas and ultra-low sulfur fuel oil). The units at this facility were subject to Prevention of Significant Deterioration (PSD) review for SO_2 at the time of their initial permitting; these SO_2 limits (0.0071 lbs/MMBtu for natural gas, and 0.0015 lbs/MMBtu for No. 2 fuel oil) were established as Best Available Control Technology (BACT) limits. These limits are incorporated into Title V Operating Permit TV–0058, which limits NO_X and SO_2 emissions on a year-round basis.

The units at Granite Ridge Energy were subject to NNSR for NO_X at the time of their initial permitting; these limits were established as LAER-based limits. The facility uses inherently low sulfur fuel (natural gas). The units at this facility were subject to PSD review for SO_2 at the time of their initial permitting; this limit (0.0023 lbs/MMBtu) was established as a BACT-based limit. These limits are included in Title V Operating Permit TV–0056, which limits NO_X and SO_2 emissions on a year-round basis.

Stored Solar Tamworth's operation is subject to an emission limit that was established when the facility was initially permitted under the PSD permit program in 1987. This control limits NO_X emissions to 0.265 lbs/MMBtu over any consecutive 24-hour period. In 2008, this facility installed overfire air (OFA) and flue gas recirculation (FGR) technologies, as well as a Selective Noncatalytic Reduction (SNCR) system and a SCR system. These limits are included in the facility's Title V Operating Permit TV–0018. Stored Solar Tamworth has voluntarily chosen to maintain NO_X emissions at or below 0.075 lb/MMBtu, on a quarterly average for the purpose of generating renewable energy certificates.

In response to the MANE–VU ''Ask,'' Stored Solar Tamworth agreed to take lower year-round, enforceable NO_X emission limitations. NHDES revised New Hampshire's Code of Administrative Rules Env-A 2300, ''Mitigation of Regional Haze'' to include these limits and submitted the rule to EPA as part of this SIP revision. This rule will lower the NO_X emissions limitations to a 30-day rolling average of 0.075 lb/MMBtu or a 24-hour calendar day average of 0.085 lb/MMBtu.

GSP Merrimack Station's operation is covered by Title V Operating Permit TV–0055 which limits NO_X and SO_2 emissions. On May 3, 2018, NHDES requested information from GSP regarding NO_X RACT and Regional Haze Rule requirements associated with the MANE–VU ''Ask.'' This request for information was focused on the most effective use of existing control technologies for MK1 and MK2. In addition, GSP completed an analysis of additional controls for NO_X and SO_2 for MK1 and MK2. After review, NHDES concluded the analysis validates the continued use of current enforceable measures for both SO_2 and NO_X. In response to the MANE–VU Ask, NHDES amended New Hampshire's Code of Administrative Rules Env-A 2300, ''Mitigation of Regional Haze'' to reference new NO_X RACT limits for MK1, which New Hampshire has made more stringent, changing from 1.22 lb/MMBtu (rolling 7-calendar day average), or 18.1 tons per calendar day (when MK2 is not in full operation), or 29.1 tons per calendar day (when combined with MK2) to 0.22 lb/MMBtu (24-hour calendar day average) or 4.0 tons per day on any calendar day during which a startup or shutdown occurs.[62] NHDES also revised Env-A 2300 to reference the new NO_X RACT limits for MK2 from 15.4 tons per 24-hour calendar day, or 29.1 tons per calendar day (when combined with MK1) to 0.22 lb/MMBtu (24-hour calendar day average) or 11.5 tons per day on any calendar day during which a startup or shutdown occurs. NHDES submitted the revised Env-A 2300 to EPA as part of New Hampshire's Regional Haze SIP revision for the second implementation period.[63]

GSP Schiller Station's operation is covered by Title V Operating Permit TV–0053 and NO_X RACT Orders RO–003 and ARD–06–001 which limit NO_X and SO_2 emissions. NHDES requested additional information from GSP regarding both NO_X RACT and Regional Haze Rule requirements associated with the MANE–VU ''Ask.'' For SR4 and SR6, NHDES requested that GSP conduct a NO_X RACT analysis for optimization of the SNCR including an evaluation of the technical and economic feasibility of operating the SNCR systems on a year-round basis to achieve various proposed NO_X emission levels. Also, GSP was requested to evaluate the most effective use of the DSI systems on SR4 and SR6 for SO_2 emission reductions. For ''Ask 1'' regarding SR5, NHDES requested GSP evaluate the most effective use of the SNCR for NO_X emission reductions and the limestone injection system for SO_2 emission reductions. GSP provided analyses to demonstrate that operation of low NO_X burners (LNB) and OFA on SR4 and SR6 were sufficient to achieve an emission limit of 0.25 lbs NO_X/MMBtu and that year-round operation of the SNCR would not result in any additional emissions reductions. NHDES issued NO_X RACT Order RO–003 on September 6, 2018, which established a NO_X emission limit for SR4 and SR6 of 0.25 lbs/MMBtu per 24-hour calendar day average that applies at all times, including periods of startup and shutdown on a year-round basis. New Hampshire submitted this NO_X RACT Order as a single-source SIP revision in September 2018. It was approved by the EPA on September 12, 2019 (84 FR 48068).

SR4 and SR6 also comply with the most current and strict federal standards for acid gases, the HCl limit required under MATS, and the 1-hr SO_2 NAAQS. GSP Schiller Station implements the most effective use of the existing control technology, which is year-round operation of the DSI systems, targeting reduction of multiple acid gases. SR5 is a wood-fired boiler that is also permitted to fire coal but has only fired coal for collecting performance test data in November 2006 during commissioning of the boiler. GSP has not combusted coal in SR5 since that time. Based on compliance stack testing and emissions monitoring data, sorbent injection is not needed to comply with the SO_2 emission limit while burning biomass. NHDES determined that the existing pollution control equipment (LNB, OFA, SNCR and DSI) installed on SR4, SR5 and SR6, the federally enforceable NO_X RACT emission limits and the NO_X and SO_2 emission limitations required by TV–0053 on a year-round basis satisfy Ask 1.

The GSP Newington Station's unit subject to ''Ask 1'' at this facility is an oil- and natural gas-fired EGU designated as NT1. NT1 is equipped

[62] See Table 4–15 ''Reductions in Allowable NO_X RACT Emission Limits for MK1 and MK2 Over Time'' of the NH RH SIP, Final 2022.

[63] Env-A 2300 incorporates by reference NO_X limits in Env-A 1300, which NHDES revised in 2018 as part of its SIP submittal for the 2008 and 2015 8-hr ozone standards. EPA has proposed in a separate action to approve Env-A 1300 into NH's SIP. *See* 88 FR 43483 (July 10, 2023). On September 6, 2023, EPA issued a final notice approving portions of Env-A 1300 in the NH SIP with the exception of New Hampshire's NO_X RACT limits applicable to coal-fired cyclone boilers. *See* 88 FR 60893 (September 6, 2023). EPA will issue a decision on New Hampshire's NO_X RACT requirements for coal-fired cyclone boilers in a subsequent rulemaking.

with an electrostatic precipitator (ESP) to control the emissions of particulate matter and LNB, OFA and water injection system to control NO_X emissions. GSP operates the water injection system on NT1 as necessary to maintain compliance with the NO_X emission limits. NT1 is subject to MATS as an existing EGU under the ''limited-use liquid oil-fired EGU72'' subcategory. These controls are included in the Title V Operating Permit TV–0054. TV–0054 contains a requirement to conduct a NO_X RACT analysis within six months of switching from the limited use MATS subcategory to continental liquid oil-fired EGU subcategory should they ever do so. NT1 does not have ''already installed'' SO_2 controls and therefore Ask 1 applies only to its NO_X emissions. NHDES determined that the existing pollution control equipment (LNB, OFA and water injection system) installed on NT1 combined with the federally enforceable NO_X emission limitations required by TV–0054 on a year-round basis satisfy Ask 1.

Wheelabrator Concord's operation is covered by Title V Operating Permit TV–0032, which was issued January 24, 2019. The two identical mass burn waterwall boilers at Wheelabrator Concord are considered large municipal waste combustion (MWC) units under New Hampshire's Code of Administrative Rules Env-A 3300, ''Municipal Waste Combustion.'' The two MWC units at Wheelabrator Concord are also subject to New Hampshire's Code of Administrative Rules Env-A 1300, ''NO_X RACT'' (approved September 6, 2023, 88 FR 60893). Therefore, NHDES determined that no further limitations from MANE–VU Ask 1 are required of this source.

MANE–VU Ask 2 consists of a request that states ''perform a four-factor analysis for reasonable installation or upgrade to emissions controls'' for specified sources. MANE–VU developed its Ask 2 list of sources for analysis by performing modeling and identifying facilities with the potential for 3.0 inverse megameters (Mm^{-1}) or greater impacts on visibility at any Class I area in the MANE–VU region. GSP Merrimack Station, in Bow, was identified as the only facility in NH with the potential for 3.0 Mm^{-1} or greater visibility impact at any MANE–VU Class I area.

GSP Merrimack Station's operation is already covered by Title V Operating Permit TV–0055 which limits NO_X and SO_2 emissions. MK1 and MK2 are cyclone-firing, wet-bottom utility boilers that burn bituminous coal and are each equipped with SCR for NO_X control as well as ESPs for particulate matter control. In addition, because of state law RSA 125–O, Multiple Pollutant Reduction Program, MK1 and MK2 are equipped with a common FGD system which is designed to reduce mercury emissions but has the co-benefit of acid gas (SO_2 and HCl) removal. New Hampshire asked GSP to perform four-factor analyses for both MK1 and MK2. As a result of this request, GSP considered various control measures for NO_X and SO_2, which, for NO_X, included review of fuel switching, OFA, SNCR, reburn, and upgrades to the existing SCR and, for SO_2, considered upgrades to the existing FGD, coal cleaning, dry FGD, FGD plus DSI and fuel switching. GSP further noted that both units already employ SCR for controlling NO_X emissions and that the existing FGD system already achieves a 95% reduction in SO_2 emissions. GSP concluded that both units are already effectively controlled and that no additional measures would result in any additional emissions reductions.[64] NHDES closely reviewed GSP's analysis and agreed with the company's conclusion that it supports the continued use of current enforceable measures for both SO_2 and NO_X, that no upgrade or replacement of the controls on MK1 and MK2 are necessary to make reasonable progress, and that a full four-factor analysis would not have identified any additional controls required for reasonable progress. New Hampshire therefore concluded that it satisfies Ask 2.

Ask 3 is for each MANE–VU state to pursue an ultra low-sulfur fuel oil standard if it has not already done so in the first implementation period. The Ask includes percent by weight standards for #2 distillate oil (0.0015% sulfur by weight or 15 ppm), #4 residual oil (0.25–0.5% sulfur by weight), and #6 residual oil (0.3–0.5% sulfur by weight). New Hampshire amended state law RSA 125–C:10-d, Sulfur Limits of Certain Liquid Fuels. Beginning on July 1, 2018, fuel imported into New Hampshire was required to meet the following reduced sulfur limits—0.0015% for No. 2 fuel oil, 0.25% for No. 4 fuel oil and 0.5% for Nos. 5 or 6 fuel oil—and as of February 1, 2019, non-compliant fuels are not allowed to be distributed for sale within the State. This law will result in further reductions in SO_2 emissions from industrial, area, and non-road sources beyond the 30% reduction seen in the 2008 vs. 2014 NEI data. The law was incorporated into New Hampshire's Code of Administrative Rules Env-A 1600, Fuel Specifications and was submitted to the EPA as a SIP revision on May 17, 2019, which EPA approved on April 26, 2021 (86 FR 21942). New Hampshire therefore concluded that it is meeting Ask 3.

MANE–VU Ask 4 requests states to update permits to ''lock in'' lower emissions rates for NO_X, SO_2, and PM at emissions sources larger than 250 million British Thermal Units (MMBtu) per hour heat input that have switched to lower emitting fuels. New Hampshire submitted that there are no such facilities in the State and therefore concluded it is meeting Ask 4.

Ask 5 requests that MANE–VU states ''control NO_X emissions for peaking combustion turbines that have the potential to operate on high electric demand days'' by either: (1) Meeting NO_X emissions standards specified in the Ask for turbines that run on natural gas and fuel oil, (2) performing a four-factor analysis for reasonable installation of or upgrade to emission controls, or (3) obtaining equivalent emission reductions on high electric demand days.[65] The Ask requests states to strive for NO_X emission standards of no greater than 25 ppm for natural gas and 42 ppm for fuel oil, or at a minimum, NO_X emissions standards of no greater than 42 ppm for natural gas and 96 ppm at for fuel oil. The peaking combustion turbines located at New Hampshire stationary sources that were identified as meeting the criteria of ''Ask #5'' are: GSP Lost Nation Station (LNCT1) GSP Merrimack Station (MKCT1 and MKCT2), GSP Schiller Station (SRCT), and GSP White Lake Station (WLCT1). GSP performed four-factor analyses for reasonable installation or upgrade to NO_X emission controls at these units, which indicated no additional NO_X controls that GSP could be employed on any of the combustion turbines that are both technically and economically feasible. All five GSP turbines are of the same era (1968–1970) and have similar NO_X emissions and specifications. Additionally, GSP has pledged to continue employing good combustion practices to optimize their NO_X emissions profile. New Hampshire reviewed and adopted the four-factor analyses and concluded it is meeting Ask 5.

The last Ask for states within MANE–VU (Ask 6) requests states to report in their regional haze SIPs about programs that decrease energy demand and increase the use of combined heat and power (CHP) and other distributed generation technologies such as fuel

[64] See NH SIP submittal Appendix T.

[65] See appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

cells, wind and solar. New Hampshire participates in RGGI,[66] a Northeast and Mid-Atlantic 10-state initiative to reduce greenhouse gas emissions that contribute to global climate change. The initiative creates a market for emissions allowances through a regional cap-and-trade program for greenhouse gas emissions from area power plants. As a co-benefit of this program, emissions of particle producing pollutants are also reduced. New Hampshire emissions allowances are sold at quarterly auctions and the proceeds fund the Greenhouse Gas Emission Reduction (GHGER) Fund. The GHGER Fund is administered by the Public Utilities Commission, which distributes the funds to programs across the state to support energy efficiency, conservation, and demand response programs.

New Hampshire's also explained the State's Renewable Portfolio Standard (RPS) statute, RSA 362–F: ''Electric Renewable Portfolio Standard'', requires each electricity provider to meet customer load by purchasing or acquiring certificates representing generation from renewable energy based on total megawatt-hours supplied. The RPS requirement increases from 4% in 2008 to 25.2% in 2025 and thereafter, based on type of renewable energy. A portion of this renewable portfolio energy generation comes from non-emitting sources such as hydro, solar and wind. New Hampshire therefore concluded it is meeting Ask 6.

In sum, New Hampshire identified several SIP approved mechanisms for controlling pollutants that impair visibility and that are necessary for reasonable progress—including its regulations limiting sulfur content in fuels, the updated RACT rules at Env-A 1300, and the more stringent NO_X limits at Stored Solar Tamworth implemented through Env-A 2300—which EPA is proposing to add to New Hampshire's SIP in this action. In addition to these SIP approved measures, New Hampshire also identified other federally enforceable and permanent controls including BACT and LAER limits from NNSR and PSD permitting that are incorporated into the facilities' Title V operating permits that have led to additional visibility improvements.

b. The EPA's Evaluation of New Hampshire's Response to the Six MANE–VU Asks and Compliance With § 51.308(f)(2)(i)

The EPA is proposing to find that New Hampshire has satisfied the requirements of § 51.308(f)(2)(i) related to evaluating sources and determining the emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors. We are proposing to find that New Hampshire has satisfied the four-factor analysis requirement through its analysis and actions to address MANE–VU Asks 1, 2 3, and 5.

As explained above, New Hampshire relied on MANE–VU's technical analyses and framework (*i.e.,* the Asks) to select sources and form the basis of its long-term strategy. MANE–VU conducted an inventory analysis to identify the source sectors that produced the greatest amount of SO_2 and NO_X emissions in 2011; inventory data were also projected to 2018. Based on this analysis, MANE–VU identified the top-emitting sectors for each of the two pollutants, which for SO_2 include coal-fired EGUs, industrial boilers, oil-fired EGUs, and oil-fired area sources including residential, commercial, and industrial sources. Major-emitting sources of NO_X include on-road vehicles, non-road vehicles, and EGUs.[67] The RPO's documentation explains that ''[EGUs] emitting SO_2 and NO_X and industrial point sources emitting SO_2 were found to be sectors with high emissions that warranted further scrutiny. Mobile sources were not considered in this analysis because any ask concerning mobile sources would be made to EPA and not during the intra-RPO and inter-RPO consultation process among the states and tribes.'' [68] EPA proposes to find that New Hampshire reasonably evaluated the two pollutants—SO_2 and NO_X—that currently drive visibility impairment within the MANE–VU region and that it adequately explained and supported its decision to focus on these two pollutants through its reliance on the MANE–VU technical analyses cited in its submission.

Section 51.308(f)(2)(i) requires states to evaluate and determine the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. As explained previously, the MANE–VU Asks are a mix of measures for sectors and groups of sources identified as reasonable for states to address in their regional haze plans. While MANE–VU formulated the Asks to be ''reasonable emission reduction strategies'' to control emissions of visibility impairing pollutants,[69] EPA believes that New Hampshire, in four of the Asks in particular, engaged with the requirement that states determine the emission reduction measures that are necessary to make reasonable progress through consideration of the four factors. As laid out in further detail below, the EPA is proposing to find that MANE–VU's four-factor analysis conducted to support the emission reduction measures in Ask 3 (ultra-low sulfur fuel oil), in conjunction with New Hampshire's analysis and explanation of how it has complied with Asks 1 (ensure the most effective use of control technologies on a year-round basis at certain EGUs), 2 (perform four-factor analyses for sources with potential for $\geq 3.0\ Mm^{-1}$ impacts), and 5 (perform four-factor analyses for measures to control NO_X emissions at certain peaking combustion turbines) satisfy the requirement of § 51.308(f)(2)(i). The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy, *i.e.,* in New Hampshire's SIP. 40 CFR 51.308(f)(2).

As for Ask 1, New Hampshire included an analysis of twelve EGUs at seven stationary sources that were identified as meeting the criteria of the Ask (i.e., capacity ≥25MW with already installed NO_X and/or SO_2 controls). New Hampshire, in response to an FLM request, also added two Wheelabrator Concord MWC units to this analysis. New Hampshire identified existing controls, updated RACT limits, and new limits implemented in Env-A 2300, *Mitigation of Regional Haze.* Technical analyses were also completed for two of the EGUs as discussed more below under Ask 2. New Hampshire asserted that it satisfies Ask 1 because its SIP-approved regulations include year-round emission limits and because it already requires that controls be run year-round for both NO_X and SO_2 by setting emission limits in permits that reflect the emission levels when the controls are run. As discussed in the previous section, New Hampshire included a description of existing rules, permit limits, and updated regulations to meet the requirements of Ask 1. New Hampshire has also increased controls on RACT (which EPA has proposed to approve in a separate notice), and EPA proposes to find that New Hampshire

[66] For more info: *https://www.energy.nh.gov/renewable-energy/regional-greenhouse-gas-initiative.*

[67] See appendix H ''Contribution Assessment—Final.''

[68] See Appendix G ''Asks—Final.''

[69] *Id.*

reasonably concluded that it has satisfied Ask 1.

Ask 2 addresses the sources MANE–VU determined have the potential for larger than, or equal to, 3.0 Mm^{-1} visibility impact at any MANE–VU Class I area; the Ask requests MANE–VU states to conduct four-factor analyses for the specified sources within their borders. This Ask explicitly engages with the statutory and regulatory requirement to determine the emission reduction measures necessary to make reasonable progress based on the four factors; MANE–VU considered it ''reasonable to have the greatest contributors to visibility impairment conduct a four-factor analysis that would determine whether emission control measures should be pursued and what would be reasonable for each source.'' [70]

As an initial matter, EPA does not generally agree that 3.0 Mm^{-1} visibility impact is a reasonable threshold for source selection. The RHR recognizes that, due to the nature of regional haze visibility impairment, numerous and sometimes relatively small sources may need to be selected and evaluated for control measures in order to make reasonable progress. See 2021 Clarifications Memo at 4. As explained in the 2021 Clarifications Memo, while states have discretion to choose any source selection threshold that is reasonable, ''[a] state that relies on a visibility (or proxy for visibility impact) threshold to select sources for four-factor analysis should set the threshold at a level that captures a meaningful portion of the state's total contribution to visibility impairment to Class I areas.'' 2021 Memo at 3. In this case, the 3.0 Mm^{-1} threshold identified only one unit at one source in New Hampshire (and only 22 across the entire MANE–VU region), indicating that it may be unreasonably high.

At 3.3 Mm^{-1}, Unit 2 at GSP Merrimack Station (MK2), in Bow, was identified as the only EGU in NH with the potential for 3.0 Mm^{-1} or greater visibility impact at any MANE–VU Class I area. As noted above, GSP Merrimack Station's operation is covered by Title V Operating Permit TV–0055 which limits NO_X and SO_2 emissions. MK1 and MK2 are each equipped with SCR for NO_X control as well as ESPs for particulate matter control. In addition, because of state law NH RSA 125–O, Multiple Pollutant Reduction Program, MK1 and MK2 are equipped with a common FGD system which is designed to reduce mercury emissions but has the co-benefit of acid gas (SO_2 and HCl) removal. While only Unit 2 was identified by MANE–VU as contributing a 3.0 Mm_{-}^{-1} or greater visibility impact at any MANE–VU Class I area, New Hampshire asked GSP to perform four-factor analyses for both Units 1 and 2. GSP responded that both units already employ SCR for controlling NO_X emissions and that the existing FGD system already achieves a 95% reduction in SO_2 emissions. Consequently, GSP concluded that both units are already effectively controlled and that any additional control measures would not result in any additional emissions reductions.[71] Based on a showing of existing effective controls, New Hampshire concluded that the result of a four-factor analysis would likely be no new controls and that no upgrade or replacement of the existing pollution control equipment was required as a result of Ask 2.

The EPA proposes to find that New Hampshire reasonably determined it has satisfied Ask 2. As explained above, we do not generally agree that a 3.0 Mm^{-1} threshold for selecting sources for four-factor analysis results in a set of sources the evaluation of which has the potential to meaningfully reduce the state's contribution to visibility impairment. MANE–VU's threshold identified only one source in New Hampshire for four-factor analysis. However, EPA notes that New Hampshire considered the four statutory factors in determining the emissions reduction measures necessary for some of its other top-impacting EGUs as part of Ask 5,[72] including Lost Nation and White Lake, which, according to New Hampshire's submission, have the potential for visibility impacts at the Presidential Range-Dry River Wilderness of 1.87 and 2.2 Mm^{-1}, respectively.[73] EPA is basing this proposed finding on the state's examination of its largest operating EGU sources, at the time of SIP submission, and on the emissions from and controls that apply to those sources, as well as on New Hampshire's existing SIP-approved NO_X and SO_2 rules that effectively control emissions from the largest contributing stationary-source sectors.

Ask 3, which addresses the sulfur content of heating oil used in MANE–VU states, is based on a four-factor analysis for the heating oil sulfur reduction regulations contained in that Ask; specifically, for the control strategy of reducing the sulfur content of distillate oil to 15 ppm. The analysis started with an assessment of the costs of retrofitting refineries to produce 15 ppm heating oil in sufficient quantities to support implementation of the standard, as well as the impacts of requiring a reduction in sulfur content on consumer prices. The analysis noted that, as a result of previous EPA rulemakings to reduce the sulfur content of on-road and non-road-fuels to 15 ppm, technologies are currently available to achieve sulfur reductions and many refiners are already meeting this standard, meaning that the capital investments for further reductions in the sulfur content of heating oil are expected to be relatively low compared to costs incurred in the past. The analysis also examined, by way of example, the impacts of New York's existing 15 ppm sulfur requirements on heating oil prices and concluded that the cost associated with reducing sulfur was relatively small in terms of the absolute price of heating oil compared to the magnitude of volatility in crude oil prices. It also noted that the slight price premium is compensated by cost savings due to the benefits of lower-sulfur fuels in terms of equipment life and maintenance and fuel stability. Consideration of the time necessary for compliance with a 15-ppm sulfur standard was accomplished through a discussion of the amount of time refiners had needed to comply with the EPA's on-road and non-road fuel 15 ppm requirement, and the implications existing refinery capacity and distribution infrastructure may have for compliance times with a 15-ppm heating oil standard. The analysis concluded that with phased-in timing for states that have not yet adopted a 15 ppm heating oil standard there ''appears to be sufficient time to allow refiners to add any additional heating oil capacity that may be required.'' [74] The analysis further noted the beneficial energy and non-air quality environmental impacts of a 15 ppm sulfur heating oil requirement and that reducing sulfur content may also have a salutary impact on the remaining useful life of residential furnaces and boilers.[75]

The EPA proposes to find that New Hampshire reasonably relied on MANE–VU's four-factor analysis for a low-sulfur fuel oil regulation, which engaged with each of the statutory factors and explained how the information supported a conclusion that a 15 ppm-sulfur fuel oil standard for fuel oils is

[70] See Appendix E ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

[71] See NH SIP submittal Appendix T.

[72] See NH SIP submittal Appendix T.

[73] *See* page 22 of the NH Regional Haze SIP submission—(May 2022).

[74] *Id.* see 8–7.

[75] *Id.* see 8–8.

reasonable. New Hampshire's SIP-approved ultra-low sulfur fuel oil rule [76] is consistent with Ask 3's sulfur content standards for the three types of fuel oils (distillate oil, #4 residual oil, #6 residual oil). EPA therefore proposes to find that New Hampshire reasonably determined that it has satisfied Ask 3.

New Hampshire concluded that no additional updates were needed to meet Ask 4, which requests that MANE–VU states pursue updating permits, enforceable agreements, and/or rules to lock-in lower emission rates for sources larger than 250 MMBtu per hour that have switched to lower emitting fuels. EPA agrees that New Hampshire does not contain any sources encompassed by this Ask, except that Schiller Station Unit 5 technically maintains the ability to operate by burning coal. We note, however, that Schiller Station Unit 5 has not burned coal other than for stack testing at installation, and it is reasonable to conclude, for a number of reasons—including historic operation, financial viability, fuel availability, and the overall direction of the fuels market—that it is unlikely that this source will ever burn coal again. GSP reportedly laid off union staff at Schiller Station and locked the gates to the facility in June of 2020.[77] [78] All three of the steam units at Schiller have reported zero operating hours and zero emissions since 2020.[79] Additionally, Schiller does not have any current capacity supply obligation for its steam units (which includes Unit 5) in the Forward Capacity Market and did not offer a bid for them in ISO New England's latest Forward Capacity Auction (FCA 17), which secures future power supply obligations through May 2027, making it unlikely that these units will ever operate in any capacity again.[80]

Ask 5 addresses NO_X emissions from peaking combustion turbines that have the potential to operate on high electric demand days. New Hampshire identified five combustion turbines in the State as meeting the criteria of this Ask: GSP Lost Nation Station (LNCT1), GSP Merrimack Station (MKCT1 and MKCT2), GSP Schiller Station (SRCT), and GSP White Lake Station (WLCT1). The Ask requests states to strive for certain NO_X emission standards for such sources or to perform four-factor analyses for reasonable installation or upgrade to emission controls. None of the five turbines New Hampshire identified are currently meeting the NO_X emissions standards in the Ask, so New Hampshire requested four-factor analyses for each source. Each combustion turbine is owned by Granite Shore Power, was originally installed around the same time (1968–1970), has a similar unit rating (290 MMBtu/hr–319 MMBtu/hr), operates at an annual capacity factor below 1%, and has NO_X emissions ranging from 0.7 lbs/MMBtu to 0.9 lbs/MMBtu. The total average yearly emissions for these sources from 2018–2022 were: GSP Lost Nation Station (LNCT1)—2.698 tons, GSP Merrimack Station (MKCT1)—2.596 tons, (MKCT2)—2.738 tons, GSP Schiller Station (SRCT)—2.582 tons, and GSP White Lake Station (WLCT1)—3.595 tons. Based on the four-factor analyses, New Hampshire concluded that no additional NO_X controls are both technically and economically feasible for these sources EPA proposes to find that New Hampshire reasonably concluded that it has met the requirements of Ask 5.

Finally, with regard to Ask 6, New Hampshire explains the clean energy requirements within the state including New Hampshire's Renewable Portfolio Standard (RPS) statute, NH RSA 362–F: Electric Renewable Portfolio Standard, and the State's participation in RGGI to reduce greenhouse gas emissions. The EPA is proposing to find that New Hampshire has satisfied Ask 6's request to consider and report in its SIP measures or programs related to energy efficiency, cogeneration, and other clean distributed generation technologies.

In sum, New Hampshire identified several mechanisms for controlling pollutants that impair visibility—including its regulations limiting sulfur content in fuels (which are in New Hampshire's SIP), the previously discussed updated RACT rules at Env-A 1300 (which EPA has in a separate action recently proposed to approve into the SIP), and the more stringent NO_X limits at Stored Solar Tamworth implemented through Env-A 2300 (which EPA is proposing to add to the SIP in this action). EPA proposes that New Hampshire has reasonably concluded that these measures are necessary to make reasonable progress for the second planning period. In addition to these SIP approved measures, New Hampshire also identified other federally enforceable and permanent controls including BACT and LAER limits from NNSR and PSD permitting, that are incorporated into the facilities' Title V operating permits.

EPA is proposing to find—based on New Hampshire's participation in the MANE–VU planning process, how it has addressed the Asks, and the EPA's assessment of New Hampshire's emissions and point sources—that New Hampshire has complied with the requirements of § 51.308(f)(2)(i).

EPA is proposing to find the state's approach reasonable for several reasons. New Hampshire reasonably evaluated and explained its decision to focus on SO_2 and NO_X to address visibility impairment within the MANE–VU region. And New Hampshire adequately supported that decision through reasonable reliance on the MANE–VU technical analyses cited in its submission. In addition, New Hampshire selected the sources with the greatest modeled impacts on visibility and also analyzed sources identified by the FLMs through the consultation process. New Hampshire's submittal also includes four-factor analyses and demonstrates that the sources of SO_2 and NO_X within the state that would be expected to contribute to visibility impairment have small emissions of NO_X and SO_2, are subject to stringent emission control measures, or both. In addition, New Hampshire's SIP-approved sulfur in fuel rule sets stringent limits for sulfur content and SO_2 emissions for fuels. The New Hampshire SIP submittal also includes Env-A 2300, which lowers NO_X emission limits for Stored Solar Tamworth and incorporates by reference an updated Env-A 1300, which includes lower NO_X limits for several sources including Merrimack Station and Wheelabrator Concord.

EPA proposes to find that New Hampshire's SIP submittal satisfies the requirements that states determine the emission reduction measures that are necessary to make reasonable progress by considering the four factors, and that their long-term strategies include the enforceable emission limitations, compliance schedules, and other measures necessary to make reasonable progress.

[76] Env-A 1600, *Fuel Specifications* was approved by EPA as a SIP revision on April 26, 2021 [86 FR 21942].

[77] *N.H. Coal Plant Will Run Through At Least 2025 After Latest Grid Auction,* NH Pub. Radio (Mar. 1, 2021), *available at https://www.nhpr.org/climate-change/2021-03-01/n-h-coal-plant-will-run-through-at-least-2025-after-latest-grid-auction; Union says Schiller coal-fired power plant is shut for good,* Granite Geek (Jan. 12, 2021), *available at https://granitegeek.concordmonitor.com/2021/01/12/union-says-schiller-coal-fired-power-plant-is-shut-for-good/.*

[78] See *https://www.ibew1837.org/content/schiller-station-closing-end-era,* or see PDF version of this article in the docket.

[79] See EPA's Clean Air Markets Program Data (CAMPD) at *https://campd.epa.gov/data.*

[80] See *https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/* to download ISO New England forward capacity auction results. This spreadsheet has also been added to the docket for this notice.

c. Additional Long-Term Strategy Requirements

The consultation requirements of § 51.308(f)(2)(ii) provide that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) respectively require states to include in their SIPs measures agreed to during state-to-state consultations or a regional planning process and to consider the emission reduction measures identified by other states as necessary for reasonable progress. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

New Hampshire participated in and provided documentation of the MANE–VU intra- and inter-RPO consultation processes, which included consulting with both MANE–VU and non-MANE–VU states about emissions reasonably anticipated to contribute to visibility impairment in New Hampshire's Class I areas and emissions from New Hampshire reasonably anticipated to contribute to visibility impairment in other Class I areas. The consultations addressed developing coordinated emission management strategies containing the emission reductions necessary to make reasonable progress at the Class I areas. New Hampshire addressed impacts to the MANE–VU Class I areas by providing information on the measures it has in place that satisfy each MANE–VU Ask.[81] New Hampshire received comments from North Carolina, Virginia, and West Virginia on New Hampshire's Draft SIP. The comments generally disagree with MANE–VU's requests of non-MANE–VU states. The comments do not include any requests that New Hampshire consider additional measures to address visibility impairment in Class I areas in those respective States. MANE–VU documented these and other disagreements that occurred during consultation. For instance, MANE–VU noted in its Consultation Report that upwind states expressed concern regarding the analyses the RPO used for the selection of states for the consultation. MANE–VU agreed that these tools, as all models, have their limitations, but nonetheless deemed them appropriate. Additionally, there were several comments regarding the choice of the 2011 modeling base year. MANE–VU agreed that the choice of base year is critical to the outcome of the study. MANE–VU acknowledged that there were newer versions of the emission inventories and the need to use the best available inventory for each analysis. However, MANE–VU disagreed that the choice of these inventories was not appropriate for the analysis.

In sum, New Hampshire participated in the MANE–VU intra- and inter-RPO consultation and included in its SIP submittal the measures identified and agreed to during those consultations, thereby satisfying § 51.308(f)(2)(ii)(A) and (B). New Hampshire satisfied § 51.308(f)(2)(ii)(C) by participating in MANE–VU's consultation process, which documented the disagreements between the upwind states and MANE–VU and explained MANE–VU's reasoning on each of the disputed issues. Based on the entirety of MANE–VU's intra- and inter-RPO consultation and both MANE–VU's and New Hampshire's responses to states' comments on the SIP submission[82] and various technical analyses therein, we propose to determine that New Hampshire has satisfied the consultation requirements of § 51.308(f)(2)(ii).

The documentation requirement of § 51.308(f)(2)(iii) provides that states may meet their obligations to document the technical bases on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress through an RPO, as long as the process has been ''approved by all State participants.'' As explained above, New Hampshire chose to rely on MANE–VU's technical information, modeling, and analysis to support development of its long-term strategy. The MANE–VU technical analyses on which New Hampshire relied are listed in the state's SIP submission and include source contribution assessments, information on each of the four factors and visibility modeling information for certain EGUs, and evaluations of emission reduction strategies for specific source categories. New Hampshire also provided information to further demonstrate the technical bases and emission information on which it relied on to determine the emission reductions measures that are necessary to make reasonable progress. Based on the documentation provided by the state, we propose to find New Hampshire satisfies the requirements of § 51.308(f)(2)(iii).

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. New Hampshire's SIP submission included 2017 NEI emission data for NO_X, SO_2, PM, VOCs and NH3 and 2016–2019 Air Markets Program Data (AMPD) emissions for NO_X and SO_2. Based on New Hampshire's consideration and analysis of the emission data in their submittal, the EPA proposes to find that New Hampshire has satisfied the emissions information requirement in 51.308(f)(2)(iii).

We also propose to find that New Hampshire reasonably considered the five additional factors in § 51.308(f)(2)(iv) in developing its long-term strategy. Pursuant to § 51.308(f)(2)(iv)(A), New Hampshire noted that existing and ongoing state and federal emission control programs that contribute to emission reductions through 2028 would impact emissions of visibility impairing pollutants from point and nonpoint sources in the second implementation period. New Hampshire included in its SIP a list of control measures with their effective dates, pollutants addressed, and corresponding State regulations.[83]

New Hampshire's consideration of measures to mitigate the impacts of construction activities as required by § 51.308(f)(2)(iv)(B) includes a list of measures that New Hampshire has implemented to mitigate the impacts from such activities. New Hampshire's Code of Administrative Rules Env-A 1000, *Prevention, Abatement, and Control of Open Source Air Pollution,* requires the control of direct emissions of particulate matter (primarily crustal material) from mining, transportation, storage, use, and removal activities. These requirements apply to such sources as quarries, unpaved roads, cement plants, construction sites, rock-crushing operations, and general earth-moving activities. Controls may include wet suppression, covering, vacuuming, and other approved means. EPA originally approved the rule effective March 19, 2018 [83 FR 6972]. Additionally, New Hampshire's Code of Administrative Rules Env-A 2800, *Sand and Gravel Sources: Non-Metallic Mineral Processing Plants; Cement and Concrete Sources,* requires the control of

[81] See appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

[82] See NH Submittal, Appendix W.

[83] See Section 4.2.8 of the New Hampshire SIP.

fugitive dust and standards for particulate matter emissions and visible emissions from sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. EPA approved the rule effective December 7, 2016 [81 FR 78052].

Pursuant to § 51.308(f)(2)(iv)(C), New Hampshire acknowledged the most impactful of the State's sources are the fossil-fuel-fired EGUs. While recent developments in the oil and gas industry have forced rapid changes in the power production sector, and some generating units have experienced sharp reductions in utilization, no retirements or replacements of New Hampshire's EGUs have occurred or been announced since the regional haze SIP was first submitted in 2010. Although Schiller Station has been in an extended outage since June of 2020, no official word from the Facility's owner has been announced regarding a permanent shut down. As noted earlier, however, the facility reportedly laid off staff and locked the gates to the facility in June of 2020. Furthermore, as also previously noted, Schiller Station does not have a current capacity supply obligation for any coal unit and did not place a bid for any of these units in ISO New England's FCA 17, which secures power supply obligations through May of 2027.

In considering smoke management as required in 40 CFR 51.308(f)(2)(iv)(D), New Hampshire explained that it addresses smoke management through the New Hampshire Prescribed Fire Council. The U.S. Forest Service and NHDES are members of the Council and assisted in the development of burn standards.[84] Federal Class I areas are not specifically identified as smoke sensitive features. New Hampshire's Class I areas are within the White Mountain National Forest; thus, the FLM for New Hampshire's two Class I areas (in this case, the U.S. Forest Service) would be informed of any planned burn in nearby lands. For any prescribed fire within this area, the burn plan would have to meet the FLM's own requirements for protection of Federal Class I areas, which are even more stringent than the New Hampshire Prescribed Fire Council's standards.

New Hampshire considered the anticipated net effect of projected changes in emissions as required by 51.308(f)(2)(iv)(E) by discussing the photochemical modeling for the 2018–2028 period it conducted in collaboration with MANE–VU. The two modeling cases run were a 2028 base case, which considered only on-the-books controls, and a 2028 control case that considered implementation of the MANE–VU Ask. New Hampshire presented the differences between the base and control cases on the 20% most impaired and 20% clearest days for the Great Gulf Wilderness Area[85] and noted the success of measures implemented during the first planning period to reduce impairment.

Because New Hampshire has reasonably considered each of the five additional factors, the EPA proposes to find that New Hampshire has satisfied the requirements of 40 CFR 51.308(f)(2)(iv).

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Because New Hampshire is host to a Class I area, it is subject to both § 51.308(f)(3)(i) and, potentially, to (ii). Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under § 51.308(f)(3)(ii)(A), if the state in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* state, and the RPG for the most impaired days in that Class I area is above the URP, the upwind state must provide the same demonstration.

Table 4–19 of New Hampshire's SIP submittal summarizes baseline visibility conditions (*i.e.,* visibility conditions during the baseline period of 2000–2004) for the most impaired and clearest days and the 2028 RPG for the most impaired days for New Hampshire's Class I areas, as well as information on natural visibility conditions, the rate of progress described by the URP in 2028, and the modeled 2028 base case (representing visibility conditions in 2028 with existing controls). Baseline visibility conditions at New Hampshire's Class I areas were 7.65 and 21.88 deciviews for the clearest and most impaired days, respectively. By comparison, New Hampshire has established 2028 RPGs for the clearest and most impaired days of 5.11 and 12.13 deciviews.[86] [87]

New Hampshire's 2028 most impaired base case of 12.13 deciviews reflects the visibility conditions that are projected to be achieved based on states' existing measures. As such, EPA considers the 2028 modeled base case value of 12.13 deciviews to be the appropriate estimate of the RPG for the 20% most impaired visibility days (as opposed to the 12.00 deciviews value that includes measures from the MANE–VU Asks). EPA expects that the observed deciview value in 2028 will actually be equal to or lower than the 12.13 deciview estimate due to numerous coal-fired utility boilers in upwind states having recently retired or being expected to retire under enforceable commitments before 2028. Even the conservative estimate of 12.13 deciviews on the most impaired days in 2028 constitutes improvement over the baseline visibility conditions of 21.88 deciviews. Therefore, the long-term strategy and the reasonable progress goals provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period. 40 CFR 51.308(f)(3)(i).

As noted in the RHR at 40 CFR 51.308(f)(3)(iii), the reasonable progress goals are not directly enforceable, but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress

[84] NH Prescribed Fire Council, (March 2019). Planning for Prescribed Burning in New Hampshire—Minimum Recommended Standards for Planning & Implementing Prescribed Burns. Available at *https://extension.unh.edu/resources/files/Resource001886_Rep2781.pdf.*

[85] See Table 4–19 of the NH Regional Haze SIP.

[86] See Table 4–6 of the NH Regional Haze SIP. These values were modeled not including the MANE–VU Asks. The values for the clearest and most impaired days including the Asks were 5.06 and 12.00 deciviews, respectively.

[87] *See also* NH Submittal, Appendix W at 7 (indicating that the RPG for New Hampshire's Class I Areas is 12.13 deciviews).

towards achieving natural visibility conditions at that area. The 2028 RPG for the most impaired days of 12.13 deciviews fulfills the regulatory purpose of the RPGs because visibility conditions at New Hampshire's Class I areas have improved since the baseline period. EPA is therefore proposing to find that New Hampshire's RPGs satisfy the applicable requirements and provide for reasonable progress towards achieving natural conditions.

Table 4–19 of New Hampshire's submission shows the URP glidepath value for New Hampshire's Class I areas in 2028 as 17.04 deciviews. New Hampshire's RPG is well below the glidepath value, thus the demonstration requirement under § 51.308(f)(3)(ii)(A) is not triggered. Under § 51.308(f)(3)(ii)(B), a state that contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another state for which a demonstration by the other state is required under 51.308(f)(3)(ii)(B) must demonstrate that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy. New Hampshire's SIP revision included the modeled MANE–VU 2028 visibility projections at nearby Class I areas.[88] While these projections may not represent the final RPGs for these Class I areas, all of the base case 2028 projections for the most impaired days at these areas (Acadia, Brigantine, Campobello, Lye Brook, Moosehorn, Dolly Sods, James River Face, Otter Creek, and Shenandoah) are well below the respective 2028 points on the URPs. Therefore, we propose it is reasonable to assume that the demonstration requirement under § 51.308(f)(3)(ii)(B) as it pertains to these areas will not be triggered for New Hampshire.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network.

The IMPROVE monitor for the Great Gulf Wilderness (GRGU1) is located at Camp Dodge, in the mid-northern area of Greens Grant in the White Mountain National Forest. The monitor site lies just east and south of where Route 16 crosses the Greens Grant/Martins Location boundary, south of Gorham, New Hampshire, at elevation 454 meters, latitude 44.31°, and longitude of −71.22°. This monitor, which also represents the Presidential Range—Dry River Wilderness, is operated and maintained by the U.S. Forest Service.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. New Hampshire has not received any recommendations or advice from EPA or affected FLM that additional monitoring is required pursuant to 40 CFR 51.308(f)(4). Therefore, New Hampshire has no current plans to alter the current strategy as long as this monitoring continues to be federally supported.

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. New Hampshire relied on the MANE–VU contribution assessment analysis.[89] The analysis included Eulerian (grid-based) source models, Lagrangian (air parcel-based) source dispersion models, as well as a variety of data analysis techniques that include source apportionment models, back trajectory calculations, and the use of monitoring and inventory data.

Section 51.308(f)(6)(iii) does not apply to New Hampshire, as it has a Class I area.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. As noted above, the Great Gulf Wilderness IMPROVE monitor is operated and maintained by the U.S. Forest Service. The monitoring strategy for New Hampshire relies upon the continued availability of the IMPROVE network. The IMPROVE monitor for the Great Gulf Wilderness (indicated as GRGU1 in the IMPROVE monitoring network database) is located at the base of Mt. Washington. New Hampshire supports the continued operation of the IMPROVE network through both state and Federal funding mechanisms.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. New Hampshire provides for emissions inventories and estimates for future projected emissions by participating in the MANE–VU RPO and complying with EPA's Air Emissions Reporting Rule (AERR). In 40 CFR part 51, subpart A, the AERR requires states to submit updated emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS) every three years. The emission inventory data are used to develop the NEI, which provides for, among other things, a triennial state-wide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment.

Section 5 of New Hampshire's submission includes tables of NEI data. The source categories of the emissions inventories included are: (1) Point sources, (2) nonpoint sources, (3) non-road mobile sources, and (4) on-road mobile sources. The point source category is further divided into Air Markets Program Data (AMPD) point sources and non-AMPD point sources.[90] New Hamshire included NEI emissions inventories for the following years: 2002 (one of the regional haze program baseline years), 2008, 2011, 2014, and 2017; and for the following pollutants: SO_2, NO_X, PM_{10}, $PM_{2.5}$, VOCs, CO, and NH3. New Hampshire also provided a summary of SO_2 and NOx emissions for AMPD sources for the years of 2016, 2017, 2018, and 2019.

Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. New Hampshire relied on the MANE–VU 2028 emissions projections for MANE–VU states. MANE–VU completed two 2028 projected emissions modeling cases—a 2028 base case that considers only on-the-books controls and a 2028 control case that considers implementation of

[88] See Appendix B ''Mid-Atlantic/Northeast U.S. Visibility Data 2004–2019 (2nd RH SIP Metrics.''

[89] See Appendix G for the contribution assessments.

[90] AMPD sources are facilities that participate in EPA's emission trading programs. The majority of AMPD sources are electric generating units (EGUs).

the MANE–VU Asks.[91] New Hampshire's SIP submittal also includes a commitment to update the statewide emissions inventory periodically.

The EPA proposes to find that New Hampshire has met the requirements of 40 CFR 51.308(f)(6) as described above, including through its continued participation in the IMPROVE network and the MANE–VU RPO and its on-going compliance with the AERR, and that no further elements are necessary at this time for New Hampshire to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, § 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

New Hampshire's submission describes the status of measures of the long-term strategy from the first implementation period. As a member of MANE–VU, New Hampshire considered the MANE–VU Asks and adopted corresponding measures into its long-term strategy for the first implementation period. The MANE–VU Asks were: (1) Timely implementation of Best Available Retrofit Technology (BART) requirements; (2) EGU controls including Controls at 167 Key Sources that most affect MANE–VU Class I areas; (3) Low sulfur fuel oil strategy; and (4) Continued evaluation of other control measures. New Hampshire met all the identified reasonable measures requested during the first implementation period. During the first planning period for regional haze, programs that were put in place focused on reducing sulfur dioxide (SO_2) emissions. The reductions achieved led to vast improvements in visibility at the MANE–VU Federal Class I Areas due to reduced sulfates formed from SO_2 emissions. New Hampshire lists in its submission an expansive list of control measures that help control the emissions of VOCs, NO_X, PM and SO_2 from a wide range of sources.[92] New Hampshire's SIP submission includes emission data demonstrating the reductions achieved throughout the state through implementation of the measures mentioned. The state included periodic emission data that demonstrate a decrease in VOCs, NO_X, PM and SO_2 emissions throughout the state. The measured visibility improvement from emission reductions at the two New Hampshire EGUs that were subjected to BART and other targeted strategies showed drastic emission decreases from 2007–2017 for SO_2, NO_X and particulate matter.[93]

The EPA proposes to find that New Hampshire has met the requirements of 40 CFR 51.308(g)(1) and (2) because its SIP submission describes the measures included in the long-term strategy from the first implementation period, as well as the status of their implementation and the emission reductions achieved through such implementation.

New Hampshire's SIP submission includes the assessments of visibility conditions and changes at the State's class I areas, expressed in terms of 5-year averages, required by section 51.308(f)(3). In particular, New Hampshire's submission reports current (2015–2019) visibility conditions for the most impaired and clearest days of 12.33 and 4.69 deciviews, respectively, indicating that haze index levels have decreased by 9.55 deciviews on the most impaired days and 2.96 deciviews on the clearest days from baseline visibility conditions (2000–2004).[94] The SIP submission also indicates that, since the period addressed in New Hampshire's previous progress report (2009–2013), haze index levels have decreased by 3.07 and 1.18 deciviews on the most impaired and clearest days, respectively. EPA therefore proposes to find that New Hampshire has satisfied the requirements of 40 CFR 51.308(g)(3).

Pursuant to § 51.308(g)(4), New Hampshire provided a summary of emissions of NO_X, SO_2, PM_{10}, $PM_{2.5}$, VOCs, and NH_3 from all sources and activities, including from point, nonpoint, non-road mobile, and on-road mobile sources, for the time period from 2002 to 2017, based on emission inventory information submitted pursuant to the AERR in 40 CFR part 51, subpart A. With respect to sources that report directly to the EPA, New Hampshire also included AMPD data for SO_2 and NO_X emissions for 2016 through 2019.

The reductions achieved by New Hampshire emission control measures are seen in the emissions inventory. Based on New Hampshire's SIP submission, NO_X emissions have continuously declined in New Hampshire from 2002 through 2017, especially in the point, nonroad and onroad mobile sectors. NO_X emissions are expected to continue to decrease as fleet turnover occurs and the older more polluting vehicles and equipment are replaced by newer, cleaner ones. New Hampshire sources that report to the EPA's AMPD showed a decline in NO_X emissions in the period since the last progress report (2,753 tons in 2014 and 1,018 tons in 2019).[95]

Emissions of SO_2 have shown a steady significant decline in New Hampshire over the period 2002 to 2017, particularly in the point, nonroad and onroad mobile sectors. Large decreases

[91] See "OTC MANE–VU 2011 Based Modeling Platform Support Document October 2018—Final." At *https://otcair.org/manevu/document.asp?fview=Reports.*

[92] See Section 5.1 of the NH Regional Haze SIP—Final May 2022.

[93] See Figure 5–1: "Emissions in SO_2, NO_X and PM from Two New Hampshire EGUs, 2007–2017 (tpy)"in the New Hampshire SIP submission.

[94] See Section 5.3 of the New Hampshire SIP submission.

[95] See Figure 5–4 "NO_X Emissions in New Hampshire for all Data Categories, 2002–2017 (tpy)" and Figure 5–7: "MANE–VU State NO_X Emissions from AMPD, 2016–2019 (tpy)"in the New Hampshire SIP submission.

are attributable to the installation of scrubbers at Merrimack Station, which became operational in late 2011, and to New Hampshire's adoption of the MANE–VU low sulfur fuel strategy.[96] Since some components of the low sulfur fuel strategy have milestones of 2016 and 2018, and as MANE–VU states continue to adopt rules to implement the strategy, additional SO_2 emissions reductions have likely been obtained since 2017 and are expected to continue into the future. Other SO_2 emissions decreases are due to fuel switching due to the availability of less expensive natural gas in recent years, and the reduction of use of coal-fired EGUs at Merrimack and Schiller Station.

New Hampshire's submission analyzes the change in PM_{10} emissions from all NEI data categories point, nonpoint, non-road, and onroad in New Hampshire, noting that PM_{10} emissions have generally remained constant, particularly between the 2002/2008 inventories and the 2011/2017 inventories. The apparent change in point source emissions of PM_{10} is due to a large point source in the State mistakenly reporting its PM_{10} emissions in pounds, rather than tons. The variations in the onroad category are due to changes in emission inventory calculation methodologies, which resulted in higher particulate matter estimates in the other years than in 2002. The large variation in emissions in the nonpoint category is due to changes in calculation methodologies for residential wood burning and fugitive dust categories, which have varied significantly.

New Hampshire also analyzes $PM_{2.5}$ emissions from all NEI data categories for the period from 2002 to 2017, noting that, similar to PM_{10} emissions, they have remained generally constant in New Hampshire. $PM_{2.5}$ emissions show some decrease in the nonroad category for the period from 2002 to 2017 because of Federal new engine standards for nonroad vehicles and equipment. Overall, there is a decrease in onroad emissions due to Federal and State regulations, but the increase from 2002 to 2008 is due to changes in emission inventory calculation methodologies and a model change, as previously explained, which resulted in higher fine particulate matter estimates in the years after 2002. The variation in emissions in the nonpoint category is due to changes in calculation methodologies for residential wood burning and fugitive dust categories, which have varied significantly.

Figure 5–20 of New Hampshire's submission shows VOC emissions from all NEI data categories for the period 2002 to 2017 in New Hampshire. VOC emissions have shown a decline in New Hampshire over the period 2002 to 2017. Much of the decrease in VOC is attributable to Federal and state rules for evaporative sources of VOC emissions such as portable fuel containers; architectural, industrial, and maintenance coatings; consumer products; and solvent degreasing. VOC emissions from non-road and on-road mobile sources are expected to continue to decrease as older, more polluting vehicles are replaced by newer, cleaner ones.

Figure 5–23 of New Hampshire's submission shows ammonia (NH_3) emissions from all NEI data categories for the period 2002 to 2017 and show a general downward trend in New Hampshire. Ammonia decreases were achieved in the onroad sectors due to Federal new engine standards for vehicles and equipment. Point source increases from 2002 to 2008 are due to reporting, grouping and methodology changes, not actual emission increases. Nonpoint increases and decreases from 2002 to 2017 are due to reporting, grouping and methodology changes. For many MANE–VU states, ammonia emissions for 2014 and 2017 are lower than they were for earlier years. Most MANE–VU states saw increases in 2017 relative to 2014; this could likely be the result of estimation methodology changes. Emissions from 2002–2008 are not comparable to post-2008 emissions due to methodology changes.

The EPA is proposing to find that New Hampshire has satisfied the requirements of § 51.308(g)(4) by providing emissions information for NO_X, SO_2, PM_{10}, $PM_{2.5}$, VOCs, and NH_3 broken down by type of source.

The emissions trend data in the SIP submission[97] supports New Hampshire's assessment that no significant increase of haze-causing pollutant emissions has occurred in New Hampshire during the reporting period and that changes in emissions have not limited or impeded progress in reducing pollutant emissions and improving visibility. New Hampshire notes that, both within and outside the State, there has been a shift to cleaner generation of electricity using natural gas in place of fuels such as coal or oil that has contributed to reduced emissions of haze-causing pollutants. The EPA is proposing to find that New Hampshire has met the requirements of § 51.308(g)(5).

I. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the Clean Air Act requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, section 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) further provides that FLMs must be given an opportunity to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

The states in the MANE–VU RPO conducted FLM consultation early in the planning process concurrent with the state-to-state consultation that formed the basis of the RPO's decision making process. As part of the consultation, the FLMs were given the opportunity to review and comment on the technical documents developed by MANE–VU. The FLMs were invited to attend the intra- and inter-RPO consultations calls among states and at least one FLM representative was documented to have attended seven intra-RPO meetings and all inter-RPO meetings. New Hampshire participated in these consultation meetings and calls.[98]

As part of this early engagement with the FLMs, on April 12, 2018, the U.S National Park Service (NPS) sent letters to the MANE–VU states requesting that they consider specific individual

[96] NH SIP Submission at 88 (Figure 5–15); *see also id.* at 71–72.

[97] See Chapter 5 ''Progress Report and Periodic Reports'' in New Hampshire SIP submission.

[98] See Appendix G ''MANE–VU Regional Haze Consultation Report and Consultation Documentation—Final.''

sources in their long-term strategies.[99] NPS used an analysis of emissions divided by distance (Q/d) to estimate the impact of MANE–VU facilities. To select the facilities, NPS first summed 2014 NEI NO_X, PM_{10}, SO_2, and SO_4 emissions and divided by the distance to a specified NPS mandatory Class I Federal area. NPS summed the Q/d values across all MANE–VU states relative to Acadia, Mammoth Cave and Shenandoah National Parks, ranked the Q/d values relative to each Class I area, created a running total, and identified those facilities contributing to 80% of the total impact at each NPS Class I area. NPS merged the resulting lists of facilities and sorted them by their states. NPS suggested that a state consider those facilities comprising 80% of the Q/d total, not to exceed the 25 top ranked facilities. The NPS originally identified five facilities in New Hampshire in this letter.[100] New Hampshire included the NPS initial letter in their proposed SIP. In a subsequent letter dated October 22, 2018, NPS identified four facilities for which more control information was desired. New Hampshire detailed the emission controls and updates to the four facilities to address the NPS's request for more information, as discussed previously.[101]

On June 9, 2021, the NPS Air Resources Division (ARD) and NPS Interior Region 1 staff hosted a consultation meeting with New Hampshire Department of Environmental Services (NHDES) to discuss a draft of the New Hampshire Regional Haze SIP. Representatives from the U.S. Forest Service and U.S. Fish & Wildlife Service also attended the meeting.[102] On June 11, 2021, the NPS sent a summary of this meeting and NPS' comments to New Hampshire via email, stating that the NPS ''commend[s] the state on its level of analysis and commitment to emissions reductions.'' [103] On June 16, 2021, the U.S. Forest Service indicated by letter that it was ''satisfied with the document as provided and offer[ed] no suggestions for change.'' [104] In accordance with CAA § 169A(d) and 40 CFR 51.308(i)(3), New Hampshire included summaries of the consultation and copies of the FLM correspondence in appendices G and W of the SIP submission. New Hampshire also noted that it has responded to FLM feedback on the selection and evaluation of specific sources potentially impacting visibility in Class I areas during development of the SIP submission and, as a result, expanded the number of sources evaluated to ensure a robust analysis and adequate controls to improve visibility.[105]

New Hampshire held two public comment periods and one public hearing related to this Regional Haze SIP Revision. On November 4, 2019, NHDES published a notice in the Manchester, NH, Union Leader announcing a 30-day public comment period providing for submission of written comments and allowing any member of the public the opportunity to request a public hearing on the SIP revision. A second public notice period was conducted starting on December 10, 2021 (and extended on December 27, 2021), with published notices in the Union Leader. A public hearing was held in Room 208C at NHDES Offices in Concord, NH and online via WebEx at 1:30 p.m. on February 23, 2022.

For the reasons stated above, the EPA proposes to find that New Hampshire has satisfied the requirements under CAA section 169A(d) and 40 CFR 51.308(i) regarding consultation with the FLMs on its regional haze SIP for the second implementation period.

New Hampshire's May 5, 2022, SIP submission includes a commitment to revise and submit a subsequent regional haze SIP by July 21, 2033, and every ten years thereafter. The state's commitment includes submitting periodic progress reports in accordance with § 51.308(f) and a commitment to evaluate progress towards the reasonable progress goal for each mandatory Class I Federal area located within the state and in each mandatory Class I Federal area located outside the state that may be affected by emissions from within the state in accordance with § 51.308(g).[106]

V. Proposed Action

The EPA is proposing to approve New Hampshire's May 5, 2022, supplemented on September 21, 2023, SIP submission as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f). Additionally, EPA is proposing to approve the revised state rule Env-A 2300, ''Mitigation of Regional Haze,'' into the SIP.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference New Hampshire's Env-A 2300 ''Mitigation of Regional Haze,'' which contains updated emissions limits for certain facilities located in the State. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

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

[99] *Id.*

[100] *Id.*

[101] See Appendix W email from NPS to NHDES.

[102] *See* NH SIP Submittal, App. W (Email from H. Salazar, Reg'l Air Res. Coord., NPS, to C. Beahm, Air Res. Div., NHDES (June 11, 2021)).

[103] Id.

[104] *Id.* (Ltr. from D. Ibarguen, Forest Supervisor, White Mtn. Nat'l Forest, to C. Wright, Air Res. Div. Dir., NHDES (June 16, 2021)).

[105] NH SIP Submittal, App. W.

[106] See the preface and Chapter 9 of the ''NH Regional Haze SIP—Final March 2022.''

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, this proposed rulemaking action, pertaining to New Hampshire regional haze SIP submission for the second planning period, is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: November 13, 2023.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2023–25336 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0097; FRL–11564–03–R4]

Air Plan Approval; Kentucky; Revisions to Jefferson County Emissions Monitoring and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), in a letter dated June 15, 2022. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and amend the District's stationary source emissions monitoring and reporting requirements. The EPA is proposing to approve the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 20, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0097 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

On June 15, 2022,[1] the Commonwealth of Kentucky submitted changes to the Jefferson County portion of the Kentucky SIP for EPA approval.[2] [3] In this rulemaking, EPA is proposing to approve changes to Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* in the Jefferson County portion of the Kentucky SIP, submitted on June 15, 2022. This regulation provides the District with the authority to require emissions monitoring at stationary sources and requires certain sources to maintain emissions records and to provide annual emissions statements to the District. This regulation does not impose any emissions limits or control requirements on any emissions source.

II. EPA's Analysis of Kentucky's SIP Revision

The June 15, 2022, SIP submission contains a version of Regulation 1.06 adopted by the District on March 16, 2022 (referred to as ''Version 11'' by the District). District Regulation 1.06, *Stationary Source Self-Monitoring,*

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[1] On June 15, 2022, Kentucky provided multiple SIP revisions that are not addressed in this rulemaking. One of the June 15, 2022, submittals contains changes to District Regulation 2.04, *Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements)* in the Kentucky SIP. These changes are not addressed in this notice. EPA will act on these changes in a separate rulemaking. Another June 15, 2022, SIP revision contained changes to District Regulation 2.17, *Federally Enforceable District Origin Operating Permits,* in the Kentucky SIP. EPA finalized its approval of changes to Regulation 2.17 on March 1, 2023. *See* 88 FR 12831.

[2] EPA received this submission on June 13, 2022, via a letter dated June 15, 2022. Throughout this notice of proposed rulemaking, this submission will be referred to as the June 15, 2022, submission.

[3] In 2003, the City of Louisville and Jefferson County governments merged, and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' However, to be consistent with the terminology used in the subheading in Table 2 of 40 CFR 52.920(c), throughout this notice we refer to the District regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

Emissions Inventory Development, and Reporting, establishes requirements for stationary source monitoring, recordkeeping, and reporting. Section 6, *Emissions Statements for Ozone Precursors,* requires that on or before April 15 of each year, all stationary sources of oxides of nitrogen (NO_X) or volatile organic compounds (VOC) shall submit to the District a statement of actual emissions of those compounds. The District requests that EPA incorporate Version 11 into the SIP and identifies changes in Regulation 1.06 between Version 11 and Version 10, the version of the rule in the SIP. Version 10 of Regulation 1.06 at Section 6.2.1 states that facilities with less than 25 tons per year (tpy) of plant-wide actual VOC emissions or less than 25 tpy of plant-wide actual NO_X emissions are exempted from the emissions statement requirements in Section 6, unless emissions of the other pollutant (VOC or NO_X) are at or above 25 tpy. The SIP submission revises Section 6.2.1 to instead exempt facilities with less than 25 tpy of plant-wide *potential* VOC *and* less than 25 tpy of plant-wide *potential* NO_X emissions from the Section 6 emissions statement requirement.[4]

Section 6 continues to satisfy the emissions statement requirements in CAA section 182(a)(3)(B),[5] and the changes do not reduce the number of facilities that must submit emissions statements. Therefore, this SIP revision will not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA.[6] Version 11 does not change the information that reporting facilities must provide in their emissions statements.

III. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as described in Section II of this preamble, the EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* District effective on March 16, 2022, except for Section 5 and any references to Section 5 in this regulation. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

The EPA is proposing to approve the aforementioned changes to Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* District effective on March 16, 2022, into the Jefferson County portion of the Kentucky SIP. The EPA is proposing to approve these changes because they are consistent with the CAA.

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Cabinet nor the District did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the proposed action being taken here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

[4] Section 6.2.1 continues to allow the District to require sources claiming the exemption to provide adequate information to verify actual emissions for the previous year.

[5] Jefferson County is subject to the requirements of CAA section 182(a) because it is part of the Louisville, KY-IN marginal nonattainment area for the 2015 8-Hour Ozone National Ambient Air Quality Standards (NAAQS).

[6] *See* CAA section 110(l).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 14, 2023.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2023–25512 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2023–0072; FRL–8536–04–OAR]

RIN 2060–AV09

New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule

AGENCY: Environmental Protection Agency (EPA)

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting comment on an Initial Regulatory Flexibility Analysis (IRFA) following the completion of a Small Business Advocacy Review (SBAR) Panel for the proposed New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units. The EPA is seeking public comment on the regulatory flexibilities considered in the IRFA. In addition, the EPA is soliciting comment on whether to include mechanisms to address potential reliability issues raised by small business and other commenters with respect to both proposed New Source Performance Standards and the proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units.

DATES: *Comments.* Comments must be received on or before December 20, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2023–0072, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2023–0072 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2023–0072.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2023–0072, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Christian Fellner, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; and email address: *fellner.christian@epa.gov* or Ms. Lisa Thompson, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9775; and email address: *thompson.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2023–0072. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy.

Written Comments. Direct your comments to Docket ID No. EPA–HQ–OAR–2023–0072 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI or multimedia submissions; and general guidance on making effective comments.

The *https://www.regulations.gov* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and should be free of any defects or viruses.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA,

note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Written Comments* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2023–0072. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

I. Background

On May 23, 2023, the Environmental Protection Agency (EPA) proposed revised new source performance standards (NSPS) under Clean Air Act (CAA) section 111(b) for greenhouse gas (GHG) emissions from new and reconstructed fossil fuel-fired stationary combustion turbine electric generating units (EGUs) and from fossil fuel-fired steam generating units that undertake a large modification.[1] As part of that proposal, the EPA certified that the proposed NSPS did not have significant impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA).[2] However, the EPA solicited comment on a number of more stringent policy options that, if finalized, may increase the impact on small businesses. Therefore, the EPA convened a Small Business Advocacy Review (SBAR) Panel for the proposed rule and has prepared an Initial Regulatory Flexibility Analysis (IRFA) under the RFA, 5 U.S.C. 601 *et seq.,* and evaluated the economic impact of the proposed NSPS on small entities, as well as any significant alternatives to the proposed rule that may minimize economic impacts on small entities while accomplishing the Agency's objectives. The complete IRFA is available for review in the rulemaking docket (EPA–HQ–OAR–2023–0072).

As required by section 604 of the RFA, the EPA will prepare a final regulatory flexibility analysis (FRFA) for this action as part of the final rule. The FRFA will address the issues raised by public comments on the IRFA.

II. Request for Public Comments

The EPA welcomes public comment on all aspects of the IRFA as well as alternatives identified in the IRFA for public comment. The EPA is soliciting comment on the small entity impacts of the proposed NSPS and any regulatory alternatives to the proposed NSPS ''which accomplish the stated objectives of the applicable statutes, and which minimize any significant impact of the proposed rule on small entities.'' The EPA is also soliciting comment on the impacts of the regulatory alternatives described in the proposed NSPS notice and, if they were to be adopted, appropriate regulatory flexibilities. The EPA solicited comment on multiple alternatives that could increase the costs to small entities and the EPA determination that the proposed amendments would not have a significant economic impact on a substantial number of small entities. For the low load subcategory, these solicitations included reducing the low load electric sales threshold to 15 percent (88 FR 33321), a second BSER component based on co-firing low-GHG hydrogen (88 FR 33286), and a BSER based on the use of high efficiency simple cycle combustion turbines that would include an initial performance test (88 FR 33285). For the intermediate load subcategory, the Agency solicitated comment on an earlier timing of the second component of the BSER and reducing the upper intermediate load electric sales threshold to a range of 29 to 35 percent for simple cycle turbines and to a range of 40 to 49 percent for combined cycle, depending on the design efficiency of the combustion turbine (88 FR 33319). The EPA also solicited comment on a BSER based on higher percentages of low-GHG hydrogen co-firing and subcategorizing intermediate load simple cycle and combined cycle turbines and establishing a BSER based on co-firing low-GHG hydrogen for both subcategories (88 FR 33332). This could have the impact of reducing the ability of owners/operators of new intermediate load combustion turbines to use efficient generation as a compliance alternative because combined cycle turbines could not be used as a compliance alternative to co-firing low-GHG hydrogen in a simple cycle combustion turbine. (The EPA notes that the scope of the IRFA is limited to the NSPS and does not include the proposed Emission Guidelines, so this request for comments does not include impacts on small existing sources.) In addition, the EPA is soliciting comment on measures to mitigate reliability concerns raised by small businesses, which were similar to concerns raised by some commenters on the proposed rules. Because mechanisms to address reliability concerns are relevant to many entities in the electricity sector, we are more broadly soliciting comment on reliability issues. The EPA requests that commenters identify which small entity they are representing, how the specific requirements could impact the small entity, and how the suggested approach would reduce burden to the small entity.

A. Subcategorization

During the SBAR Panel outreach, small entity representatives (SERs) expressed concerns that control requirements on rural electric cooperatives may present an additional hardship on economically disadvantaged communities and on small entities. SERs stated that the EPA should further evaluate potential increased energy costs, transmission upgrade costs, and infrastructure encroachment which may directly affect the disproportionately impacted communities. Additionally, SERs stated that neither hydrogen co-firing nor carbon capture and storage (CCS) can be BSER because neither technology is commercially available or viable in very rural areas. The EPA is soliciting comment on potential exclusions or subcategories that may address the concerns of small entities. Such

[1] See 88 FR 33240 (May 23, 2023).

[2] See 88 FR 33418 (May 23, 2023).

exclusions or subcategories, if available, must be based on the class, type, or size of the sources and be consistent with the Clean Air Act. Additionally, consistent with the SBAR panel report, the EPA solicits comment on whether ''rural electric cooperatives and small utility distribution systems (serving 50,000 customers or less) can expect to have access to hydrogen or CCS infrastructure, and if a subcategory for these units is appropriate.''

B. Reliability Mechanisms

During the SBAR Panel outreach, SERs raised concerns regarding potential reliability impacts of the proposed rules, and many of those concerns were similarly raised by commenters on the May 2023 proposal. Commenters requested additional pathways to enable EGUs to operate notwithstanding compliance schedules, based on a showing of reliability need by the relevant balancing authority, Regional Transmission Organizations (RTO), or Independent System Operator (ISO). Commenters also suggested the EPA provide flexibilities for situations outside the control of affected sources (*e.g.,* delay in the issuance of a relevant permit needed to meet the standards of performance, infrastructure delays, or supply chain disruptions) that could lead to adverse impacts on grid reliability. The EPA recognizes that it is difficult to separate SERs' reliability comments from broader considerations of reliability in the context of this rulemaking. Therefore, the EPA will consider all comments we receive on this issue whether or not they are small business focused. The EPA is soliciting detailed comment on whether the Agency should include a specific mechanism or mechanisms to address grid reliability needs that may arise during implementation of its final rules, specifically:

- Tools and mechanisms already available to balancing authorities, RTOs, ISOs, and other reliability authorities to address reliability challenges;
- Circumstances and conditions that should be accounted for in a mechanism or mechanisms to address reliability concerns, including (i) concerns driven by events, such as extreme weather, unexpected generator outages, and unanticipated transmission line disruption; and (ii) concerns driven by supply chain or construction delays or disruptions for new generation, transmission lines, or other infrastructure as well as delays in permit issuance for controls required to meet the standards of performance;
- The technical form and structure of such a mechanism or mechanisms, such as an extension of the compliance date or a temporary, alternative standard of performance, and supporting details describing whether such a mechanism or mechanisms should be automated to enable extensions;
- Detailed descriptions of other reliability mechanisms or ways to address commenters' reliability concerns, including phase-in considerations for small entities;
- What information would be ample and appropriate, but not overly burdensome, to substantiate the need for and use of such a mechanism or mechanisms, including any appropriate documentation from balancing authorities, RTOs, or ISOs (the EPA specifically solicits comment on approaches that would minimize potential documentation burden); and
- Lessons learned from the architecture of any previously proposed or finalized reliability mechanisms and the use of the mechanism in practice.

III. Statutory and Executive Order Reviews

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

This action is a ''significant regulatory action'' as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. For 40 CFR part 60, subpart TTTT, OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0685. For 40 CFR part 60, subpart TTTTa, the Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2771.01. For 40 CFR part 60, subpart UUUUb, the ICR document that the EPA prepared has been assigned EPA ICR number 2770.01.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 603 of the RFA, the EPA prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is available for review in the docket and is summarized here.

The IRFA describes the reason why the proposed rule is being considered and describes the objectives and legal basis of the proposed rule, as well as discusses related rules affecting the power sector. The IRFA describes the EPA's examination of small entity effects prior to proposing a regulatory option and provides information about steps taken to minimize significant impacts on small entities while achieving the objectives of the rule.

The EPA also summarized the potential regulatory cost impacts of the proposed rule and alternatives in Section 5.3 of the RIA.[3] The analysis in the IRFA drew upon some of the same analyses and assumptions as the analyses presented in the RIA.

We estimated cost-to-sales ratios (CSR) for each small entity to summarize the impacts of the proposed new source rule on small entities that build new natural gas combined cycle (NGCC) and natural gas combustion turbines (NGCT) units over the forecast period. For NGCT additions, we find that average compliance costs are expected to be negative. For NGCC additions, 8 small entities are potentially affected based on historical build patterns and projected economic additions. Of these 8 small entities, none are projected to have cost-to-sales ratios greater than 1 percent. The analysis above is subject to a number of caveats and limitations. These are discussed in detail in Section 5 of the IRFA.

As required by section 609(b) of the RFA, the EPA also convened an SBAR Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small-entity comments on issues related to elements of an IRFA. A copy of the full SBAR Panel Report is available in the rulemaking docket (EPA–HQ–OAR–2023–0072).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

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

[3] See Docket ID No. EPA–HQ–OAR–2023–0072–0007.

E. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks Populations and Low-Income Populations

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy because this action only solicits comments on regulatory alternatives for small businesses.

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

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns because this action only solicits comments on regulatory alternatives for small businesses.

Michael S. Regan,

Administrator.

[FR Doc. 2023–25580 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2016–0126]

RIN 2127–AL55

Federal Motor Vehicle Safety Standards; V2V Communications

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

ACTION: Withdrawal of proposed rule.

SUMMARY: The National Highway Traffic Safety Administration withdraws a previous proposal to create a new Federal Motor Vehicle Safety Standard requiring vehicle-to-vehicle (V2V) communications in new light vehicles. After the advent of new V2V communications protocol, and after a recent Federal Communications Commission (FCC) decision regarding the regulations governing the 5.850–5.895 gigahertz (5.9 GHz) band, the agency has decided to withdraw its V2V proposed rule.

DATES: NHTSA is withdrawing the proposed rule published January 12, 2017 (82 FR 3854) as of November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua Fikentscher, Office of Crash Avoidance Standards, by telephone at 202–366–1688, by email *joshua.fikentscher@dot.gov* and by fax at 202–493–2990. Rebecca Schade, Office of the Chief Counsel, by telephone at 202–366–2992, and by email at *rebecca.schade@dot.gov.* Mailing address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background on V2V Technology

Vehicle-to-vehicle (V2V) technology consists of systems that enable vehicles to broadcast Basic Safety Messages (BSMs) about their speed, heading, brake status, and other vehicle information using the radiofrequency spectrum, and to receive the same information from surrounding vehicles also equipped with the technology. When received in a timely manner, this information could help vehicle systems identify potential crash situations with other vehicles and provide warning messages to their drivers. V2V technology is distinct from ''vehicle-resident'' technologies (*e.g.,* camera and sensor-based systems) and would operate separately from, or complementarily to, advanced driver assistance systems. V2V employs signals which can be received around corners or other physical obstructions and in suboptimal weather and light conditions, without line-of-sight limitations that vehicle-resident technologies can face.

Summary of the Notice of Proposed Rulemaking

On January 12, 2017, the agency published a notice of proposed rulemaking (NPRM) to create a new Federal Motor Vehicle Safety Standard (FMVSS) for V2V communications, which NHTSA proposed to designate as FMVSS No. 150.[1] The NPRM proposed to mandate V2V communication technology in all new light vehicles based on DSRC radiofrequency transmissions,[2] and also proposed a pathway for vehicles to comply using non-DSRC technology if certain performance and interoperability standards were met. The NPRM further proposed technical requirements for the content, security, and handling of V2V messages as well as system requirements more broadly. While the NPRM proposed to allow compliance using non-DSRC technologies, all of the technical requirements (and expectations about the effectiveness of V2V communications at helping vehicles to prevent crashes) were based on DSRC, and the proposal would have required non-DSRC technologies to be interoperable with DSRC.

The NPRM also discussed the possibility that the 5.9 gigahertz (GHz) band of radiofrequency spectrum in which DSRC has operated might be modified and/or opened to unlicensed devices, such as cordless telephones and outdoor broadband transceivers.[3] NHTSA sought comment on what that

[1] 82 FR 3854.

[2] DSRC is a short-range wireless technology that would provide local, nearly instantaneous message transmission with good reliability, critical characteristics for detecting potential and imminent crash scenarios.

[3] Detailed in a Public Notice from the FCC: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-68A1_Rcd.pdf.*

might mean for the effectiveness or viability of V2V systems using DSRC technology.

Summary of Comments

NHTSA received 492 comments regarding the 2017 NPRM.[4] More than 100 comments were submitted by organizations including, but not limited to: automotive manufacturers, suppliers and associations, and wireless companies and associations. There were also comments from consumer and trade associations, nonprofits, think tanks, and Federal, State, and local governments, and more than 350 comments were received from individual citizens. Most organizations expressed broad support for mandating V2V technology on all new light vehicles and had various comments about the technical implementation thereof. Most individual citizens who commented expressed concerns about cybersecurity, privacy, and electromagnetic hypersensitivity, though some supported a V2V mandate for its potential safety benefits.

Commenters also addressed the FCC proposals to allow sharing of the 5.9 GHz radio frequency band. Approximately 20 automotive organizations addressed these proposals. The general consensus among commenters was that the specific V2V mandate proposed in the NPRM would need to be revisited should there be changes to the regulations governing the use of the 5.9 GHz band.

New Technologies

Since the release of the NPRM, one potential alternative for DSRC, LTE[5] Cellular-V2X, or LTE C–V2X, has emerged and is supported by some industry stakeholders as an alternative to DSRC. While based on cellular technology, LTE C–V2X offers device-to-device communications without the need for a cell tower to schedule and relay messages. Standards organizations that helped develop 5G cellular technology are also working on a 5G-based version of C–V2X (5G C–V2X) that will focus on device-to-device communications with the potential for enhanced performance over either DSRC or LTE C–V2X, and potentially allow for further advancements in vehicle platooning, advanced driving, extended sensors, and remote driving.

Revisions to the 5.9 GHz Regulations

On November 18, 2020, the FCC issued a final rule which approved a reallocation of the 5.9 GHz spectrum[6] that reassigns the lower 45 MHz of the previously reserved spectrum for unlicensed use. It further requires that 20 MHz of the 30 MHz remaining for transportation use transition from DSRC to cellular vehicle-to-everything (C–V2X) technology. Of note, on April 24, 2023, the FCC granted a joint waiver allowing deployment of C–V2X technology.[7] The U.S. Department of Transportation, in cooperation with the NTIA, DoD, NASA and NSF, conducted a data-driven technical analysis to inform the FCC with the relevant information to make a determination on the technical parameters requested in the waiver. The FCC's April 24 action allows proponents of C–V2X use of the upper 30 MHz of the 5.9 GHz band for deployment. DOT has ongoing, active research in the area of whether and how C–V2X could support safety-critical technologies.[8]

Rationale for Withdrawal

NHTSA and the DOT believe that V2V and other vehicle-to-everything (V2X) technologies hold tremendous promise to improve safety and to offer innovative services to consumers. The record in response to the NPRM supports this conclusion.

However, given the advent of new V2V communications protocol, and the revised regulations governing the 5.9 GHz band, the agency believes a regulatory action to revise the proposed rulemaking cannot be reasonably accomplished at this time. For this reason, the agency has decided to withdraw the V2V rule at this time.

Conclusion

NHTSA does not believe it is reasonable to move forward with the proposal. Based on its evaluation of the available information, NHTSA has concluded that significant analysis must be conducted before determining whether a V2V standard is appropriate, and, if so, what that standard would encompass. Accordingly, NHTSA withdraws the NPRM. NHTSA will continue to monitor the development of V2V technology for possible future vehicle safety applications. The NPRM published in the **Federal Register** January 12, 2017, at 82 FR 3854, is withdrawn.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Ann Carlson,

Acting Administrator.

[FR Doc. 2023–25519 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–59–P

[4] Comments are available in Docket No. NHTSA–2016–0126 at *http://www.regulations.gov.*

[5] LTE, Long-Term Evolution, is a predecessor to 3G cellular technology and a precursor to 4G cellular technology.

[6] Detailed in a First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification, document FCC–CIRC2011–01, which can be found at *https://docs.fcc.gov/public/attachments/DOC-367827A1.pdf.*

[7] *https://docs.fcc.gov/public/attachments/DA-23-343A1.pdf.*

[8] *See, e.g., https://www.transportation.gov/content/safety-band* (last accessed Aug. 22, 2023).

Notices

Federal Register

Vol. 88, No. 222

Monday, November 20, 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

Agricultural Marketing Service

[Doc. No. AMS–LP–23–0056]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intent to request approval from the Office of Management and Budget (OMB), for an extension of and revision to the currently approved information collection used in support of Audit Verification Programs.

DATES: Comments must be submitted on or before January 19, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *https://www.regulations.gov.* Written comments may also be submitted to Quality Assessment Division; Livestock and Poultry Program; Agricultural Marketing Service, USDA; 1400 Independence Avenue SW, Stop 0258; Washington, DC 20250–0258. All comments should reference the docket number AMS–LP–23–0056, the date of submission, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided and will be made available for public inspection at *https://www.regulations.gov* and the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jeff Waite, Branch Chief, Quality Assessment Division; Phone: (202) 309–1096; or Email *Jeff.Waite@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: List of U.S. Manufacturers of Specific CVM-Regulated Products with Interest in Exporting Covered Products to China.

OMB Number: 0581–0339.

Expiration Date of Approval: March 31, 2024.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627) as amended directs and authorizes the U.S. Department of Agriculture (USDA) to provide inspection, certification, and verification services of the quality and condition of agricultural products which facilitate the marketing of agricultural products. To provide programs and services, section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture to inspect, certify, and verify agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of service. The regulation in 7 CFR 62—AMS Audit Verification and Accreditation Programs is a collection of voluntary, audit-based, user-fee funded verification programs that allow applicants to have program documentation and program processes assessed by AMS auditor(s) and other USDA officials.

Because this is a voluntary program, respondents request or apply for the specific service they wish, and in doing so, they provide information. The information collected is used only by authorized representatives of USDA (AMS, Livestock and Poultry Program's QAD auditing staff) and is used to conduct services requested by respondents. Information collected includes but is not limited to facility name, address, and identifier, and product.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Manufacturing/processing facilities.

Estimated Number of Respondents: 85.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Responses: 255.

Estimated Total Annual Burden on Respondents: 21.2 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of AMS, including whether the information will have practical utility; (2) the accuracy of AMS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record, including any personal information provided.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–25562 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–23–0076]

Notice of Availability of the Programmatic Environmental Assessment for AMS Organic Market Development Grant Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Agricultural Marketing Service (AMS) announces that the Draft Programmatic Environmental Assessment (PEA) for the Organic Market Development Grant Program (OMDG) is available for public review and comments.

DATES: Comments must be received on or before December 20, 2023 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments may be submitted electronically by Email: *OMDG@usda.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. AMS will address comments received on the draft PEA in the final PEA.

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Associate Deputy Administrator, Transportation and Marketing Program; Telephone: (202)–690–1300; Email: *OMDG@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Draft PEA analyzes and discloses the potential environmental impacts associated with the establishment of the Organic Market Development Grant Program (OMDG). AMS has proposed to fund grants to support the development of new and expanded organic markets by providing additional resources for businesses transitioning to organic or initiating new organic production and processing capacity. These grants will create new and improved markets for domestically produced organic products through investments in expanded certified organic processing capacity; activities that develop, maintain, or expand commercial organic markets; and organic product developments which create new uses for producers that currently lack markets.

Selected applicants for the OMDG program may invest in certified organic infrastructure and expand processing capacities, in addition to adding manufacturing, storing, transporting, wholesaling, or distribution infrastructure. Funded activities will include developing new markets to increase demand for domestically produced organic agricultural products and providing additional market networks.

The OMDG Program is authorized by authorized by section 5(e) of the Commodity Credit Corporation (CCC) Charter Act, (15 U.S.C. 714(e)). Section 5(e), as amended, authorizes USDA (through the CCC) to ''increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities''. Recipients of funding from this proposed program would be allowed 36 months to complete work funded by the grant awards.

The environmental impacts of funding projects to enhance existing organic processing facilities have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, 42 U.S.C. 4321–4347, as amended.

A Draft PEA has been prepared, and based on this analysis, AMS has preliminarily determined there will not be a significant impact to the human environment. As a result, an Environmental Impact Statement (EIS) has not been initiated (40 CFR 1501.6). AMS intends for this PEA to create efficiencies by establishing a framework that can be used for ''tiering,'' where appropriate, to project-specific actions that require additional analysis. As decisions on specific applications are made, to the extent additional NEPA analysis is required, environmental review will be conducted to supplement the analysis set forth in this PEA.

The Draft PEA is available for review online at the program website: *https://www.ams.usda.gov/services/grants/localmcap.*

Comments Invited

Interested stakeholders are invited to submit comments on the Draft PEA, as specified in the **ADDRESSES** section of this notice. The most helpful comments reference a specific recommendation for changing AMS's proposed approach to assessing environmental impacts, explain the reason for any recommended change, and include supporting information. AMS will consider all comments received on or before the closing date.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–25564 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request approval to revise and extend a currently approved information collection to gather data related to water usage for North Carolina agricultural operations that likely use between 10,000 and 1,000,000 gallons per day. Revision to burden hours will be needed due to changes in the size of the sample frame and/or questionnaire length.

DATES: Comments on this notice must be received by January 19, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0262, by any of the following methods:

- *Email: omboffice@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier: Hand deliver to:* Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph L. Parsons, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS Clearance Officer, at (202) 720–2206.

SUPPLEMENTARY INFORMATION:

Title: Water Use Survey.

OMB Control Number: 0535–0262.

Expiration Date of Approval: June 30, 2024.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Water Use survey program will collect information on water usage for North Carolina agricultural operations that likely use between 10,000 and 1,000,000 gallons per day. Agricultural operations who use over 1,000,000 gallons in any one day are required to report their water usage directly to North Carolina Department of

Environmental Quality (NCDEQ) and are not included in this survey. The program will help the North Carolina Department of Agriculture and Consumer Services (NCDACS) and NCDEQ fulfill the requirements of North Carolina state legislation enacted in 2008 (SL2008–0143). All questionnaires included in this information collection will be voluntary. This project is conducted as a cooperative effort with the North Carolina Department of Agriculture and Consumer Services. Funding for this survey is being provided by NCDACS.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–113, 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this information collection is based on similar surveys with expected response time of 30 minutes. The estimated sample size will be approximately 3,700. The frequency of data collection for the different surveys is annual. Estimated number of responses per respondent is 1. Publicity materials and instruction sheets will account for approximately 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: North Carolina agricultural operations that likely use between 10,000 and 1,000,000 gallons annually.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden on Respondents: 1,918 hours.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 15, 2023.

Joseph L. Parsons,

Associate Administrator.

[FR Doc. 2023–25600 Filed 11–17–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–889]

Certain Quartz Surface Products From India: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain quartz surface products (quartz surface products) from India. We determine that Pokarna Engineered Stone Limited (PESL) and Marudhar Rocks International Pvt. Ltd./Marudhar Quartz Surface Private Limited (collectively, Marudhar Rocks) did not make sales of subject merchandise at less than normal value during the period of review (POR) June 1, 2021, through May 31, 2022. We also determine that one company had no shipments.

DATES: Applicable November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2023, Commerce published the *Preliminary Results* of this review in the **Federal Register** and invited interested parties to comment on those results.[1] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The products covered by the *Order* are quartz surface products from India. For a complete description of the scope, the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are listed in Appendix I to this notice and addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that 3HQ Surfaces had no shipments of subject merchandise during the POR.[4] No party filed comments with respect to this preliminary finding, and we received no

[1] *See Certain Quartz Surface Products from India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 43292 (July 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review: Certain Quartz Surface Products from India, 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Quartz Surface Products from India and Turkey: Antidumping Duty Orders,* 85 FR 37422 (June 22, 2020) (*Order*).

[4] *See Preliminary* Results PDM at 5.

information to contradict it. Therefore, we continue to find that 3HQ Surfaces had no shipments of subject merchandise during the POR and will issue appropriate liquidation instructions based on the final results of this review.[5]

Rates for Companies Not Selected for Individual Examination

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated dumping margins of zero percent for both Marudhar Rocks[6] and PESL. Thus, in accordance with the expected method, and consistent with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,*[7] in this review, we have assigned the non-selected companies a zero percent margin.

Final Results of the Review

Commerce determines the following estimated weighted-average dumping margins exist for the period June 1, 2021, through May 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Pokarna Engineered Stone Limited	0.00
Marudhar Rocks International Pvt. Ltd./Marudhar Quartz Surface Private Limited	0.00
Non-Selected Companies[8]	0.00

Disclosure

We intend to disclose the calculations performed for Marudhar Rocks for these final results of review to the parties within five days after the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b). There are no final results calculations to disclose for PESL.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates by dividing the total amount of antidumping duties calculated for the examined sales by the total entered value of the examined sales to that importer. Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by PESL or Marudhar Rocks for which the company did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be the rates established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 1.02 percent, the all-others rate established in the investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding the Administrative Protective Order

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or

[5] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Automatic Assessment Clarification*).

[6] In the *Preliminary Results,* we preliminarily determined to collapse Marudhar Rocks and Marudhar Quartz as a single entity for the POR, pursuant to 19 CFR 351.401(f). *See* Memorandum, ''Preliminary Affiliation and Collapsing Memorandum,'' dated June 29, 2023. No interested parties filed any comments on Commerce's collapsing decision. We continue to treat the two companies as a single entity for the final results of this administrative review.

[7] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345, 1352 (Fed. Cir. 2016) (*Albemarle*) (holding that Commerce may only use ''other reasonable methods'' if it reasonably concludes that the expected method is ''not feasible'' or ''would not be reasonably reflective of potential dumping margins'').

[8] *See* Appendix II for a full list of the companies not individually examined in this review.

[9] *See Automatic Assessment Clarification.*

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 13, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: The Calculation of Constructed Value Profit and Selling Expenses for the Final Results
  Comment 2: Whether to Apply an Adverse Inference Regarding Marudhar Rocks' Physical Characteristics Reporting
  Comment 3: Whether Commerce Should Accept Marudhar Rocks' Reported Labor, Energy and Variable Overhead
  Comment 4: Whether to Treat Marudhar Rocks' Free Samples as U.S. Sales
  Comment 5: Capping Freight Revenue Recovered by Marudhar Rocks
VI. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

1. Antique Granito Shareholders Trust
2. Antique Marbonite Private Limited/Prism Johnson Limited/Shivam Enterprises
3. Argil Ceramics
4. Aro Granite Industries Ltd.
5. Asian Granito India Limited
6. Baba Super Minerals Pvt. Ltd.
7. Camrola Quartz Limited
8. Classic Marble Company Pvt. Ltd.
9. Cuarzo
10. Divya Shakti Granites Ltd
11. Divya Shakti Ltd
12. Esprit Stones Private Limited
13. Global Surfaces Limited
14. Glowstone Industries Pvt. Ltd.
15. Hi Elite Quartz LLP
16. International Stones India Pvt. Ltd.
17. Keros Stone LLP
18. Mahi Granites Private Limited
19. Malbros Marbles and Granites Industries
20. Mountmine Impex Pvt. Ltd.
21. Pacific Industries Limited
22. Pacific Quartz Surfaces LLP
23. Paradigm Stone India Pvt. Ltd.
24. Pelican Buildmat Pvt. Ltd.
25. Pelican Grani Marmo Pvt. Ltd.
26. Pelican Quartz Stone
27. QuartzKraft LLP
28. Renshou Industries
29. RMC Readymix Porselano India Limited
30. Rocks Forever
31. Safayar Ceramics Pvt. Ltd.
32. Satya Exports
33. Southern Rocks and Minerals Pvt. Ltd.
34. Sunex Stones Private Limited
35. Tab India Granites Pvt. Ltd.
36. Venkata Sri Balaji Quartz Surfaces

[FR Doc. 2023–25559 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board or TTAB) will hold a meeting on Tuesday, December 12, 2023. The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. The main purpose of this meeting is for Board members to discuss priority issues related to travel and tourism. The final agenda will be posted on the Department of Commerce website for the Board at *https://www.trade.gov/ttab-meetings* at least two days prior to the meeting.

DATES: Tuesday, December 12, 2023, 11:00 a.m.–12:30 p.m. EST. The deadline for members of the public to register for the meeting or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EST on Friday, December 8, 2023.

ADDRESSES: The meeting will be held in person in Washington, DC and virtually. The location and access information will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted by email to *TTAB@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Aguinaga, the United States Travel and Tourism Advisory Board, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–2404; email: *TTAB@trade.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. Any member of the public requesting to join the meeting is asked to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Members of the public wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EST on Wednesday, December 6, 2023, for inclusion in the meeting records and for circulation to the members of the Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Aguinaga at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EST on Wednesday, December 6, 2023, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be transmitted to the Board but may not be considered during the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

This Notice is published pursuant to the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C., app., 10(a)(2). The Committee was established pursuant to section 607 of the Visit America Act, Subtitle A of title VI of division BB of the Consolidated Appropriations Act, 2023, Public Law 117–328, and in accordance with the provisions of the FACA, 5 U.S.C. 1001 *et seq.*

Jennifer Aguinaga,

Designated Federal Officer, United States Travel and Tourism Advisory Board.

[FR Doc. 2023–25625 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119; C–570–120]

Certain Large Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof From the People's Republic of China: Rescission of 2022–2023 Antidumping and 2022 Countervailing Duty Administrative Reviews

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

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative reviews of the antidumping (AD) and countervailing duty (CVD) orders on certain large vertical shaft engines between 225CC and 999CC (large vertical shaft engines), and parts thereof from the People's Republic of China (China) for the period of reviews (PORs) March 1, 2022, through February 28, 2023, and January 1, 2022, through December 31, 2022, respectively, based on the timely withdrawals of the requests for review.

DATES: Applicable November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Austin Davison, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2811.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2023, Commerce published a notice of opportunity to request an administrative review of the AD and CVD orders on certain vertical shaft engines between 225CC and 999CC, and parts thereof from China.[1] On March 31, 2023, Commerce received timely-filed requests from Briggs & Stratton LLC (the petitioner) and Kohler Co. (Kohler), a domestic producer of large vertical shaft engines, for administrative review of the AD and CVD orders for 14 Chinese large vertical shaft engine producers and/or exporters, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2]

On May 9, 2023, pursuant to these requests, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating administrative reviews of the AD and CVD orders on large vertical shaft engines from China for 14 Chinese producers and/or exporters.[3] On October 7, 2023, the petitioner and Kohler timely withdrew their requests for administrative reviews of all companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioner and Kohler withdrew their requests for reviews within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative reviews of the AD and CVD orders on large vertical shaft engines from China covering the PORs of March 1, 2023, through February 28, 2023, and January 1, 2022, through December 31, 2022, respectively, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and countervailing duties on all appropriate entries of large vertical shaft engines from China during the periods of review noted above. Antidumping and countervailing duties shall be assessed at rates equal to the cash deposit of estimated antidumping or countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 14, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–25560 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 13091, 13093 (March 2, 2023).

[2] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated March 31, 2023 and Kohler's Letter, ''Request for Administrative Review,'' dated March 31, 2023 (AD); Petitioner's Letter, ''Request for Administrative Review,'' dated March 31, 2023 and Kohler's Letter, ''Request for Administrative Review,'' dated March 31, 2023 (CVD).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 29881 (May 9, 2023).

[4] *See* Petitioner's Letter, ''Withdrawal of Request for Administrative Review,'' dated August 7, 2023; *see also* Kohler's Letter, ''Withdrawal of Request for Administrative Review,'' dated August 7, 2023; Petitioner's Letter, ''Withdrawal of Request for Administrative Review,'' dated August 7, 2023; and Kohler's Letter, ''Withdrawal of Request for Administrative Review,'' dated August 7, 2023.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD542]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Executive Committee.

DATES: The meetings will be held Tuesday, December 12 through Thursday, December 14, 2023. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be an in-person meeting with a virtual option. Council members, other meeting participants, and members of the public will have the option to participate in person at The Notary Hotel Philadelphia or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/briefing/december-2023.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org,* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, December 12, 2023

Executive Committee—Closed Session

2023 Ricks E. Savage Award discussion

Council Convenes With the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board

Summer Flounder Commercial Mesh Size Regulations and Exemptions

Review industry and Monitoring Committee recommendations on summer flounder commercial minimum mesh size, Small Mesh Exemption Program, and flynet exemption
Consider any necessary changes to the regulations
Identify next steps and research priorities as needed

LUNCH

Recreational Demand Model Overview—Lou Carr-Harris, Northeast Fisheries Science Center

Overview of Northeast Fishery Science Center (NEFSC) Recreational Demand Model and development of Decision Support Tool

2024–2025 Summer Flounder Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Percent Change Approach
Recommend conservation equivalency or coastwide management and associated measures for 2024–2025

2024–2025 Scup Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Percent Change Approach
Recommend 2024–2025 recreational management measures for federal waters, provide preliminary guidance to the Technical Committee on development of state measures proposals, and discuss the federal waters closure for January–April 2024

Wednesday, December 13, 2023

2024 Black Sea Bass Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Percent Change Approach
Recommend conservation equivalency or coastwide management and associated measures for 2024
Review and consider approval of Virginia's proposal for February 2024 recreational fishery (Board only)

Council and Summer Flounder, Scup, and Black Sea Bass Board Adjourn Council Convenes With the ASMFC Interstate Fishery Management Program Policy Board

Summer Flounder, Scup, Black Sea Bass, and Bluefish Recreational Measures Setting Process Framework/Addenda

Update on progress
Consider refining range of preliminary alternatives based on recommendation of FMAT/PDT
Discuss next steps

Council and ASMFC Interstate Fishery Management Program Policy Board Adjourn Council Convenes

Guidance Document for Council Review of Exempted Fishing Permit Applications for Unmanaged Forage Amendment Ecosystem Component Species

Review revisions to the document
Review Ecosystem and Ocean Planning Advisory Panel and Committee input
Approve document

Responsible Offshore Fishing Alliance (ROSA)—Reneé Reilly, ROSA

Review of ROSA's Strategic Plan, activities, and steps to support the Council's offshore wind efforts

LUNCH

2024–2026 Spiny Dogfish Specifications

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff
Adopt specifications for 2024–2025
Review and revise 2024–2025 commercial measures if needed

2024–2025 Atlantic Mackerel Specifications

Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and staff

Golden Tilefish Individual Fishing Quota Program Twelve-Year Review

Presentation of final report (Northern Economics, Inc.)
Initiate public comment period

2024 Implementation Plan

Review and approve 2024 Implementation Plan

Thursday, December 14, 2023

Business Session

Committee Reports (SSC); Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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).

Special Accommodations

These 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: November 14, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–25534 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD541]

Pacific Island Fisheries; Western Pacific Stock Assessment Review; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) and NMFS will convene a Western Pacific Stock Assessment Review (WPSAR) of a benchmark stock assessment for the main Hawaiian Islands (MHI) Deep 7 Bottomfish Complex.

DATES: The WPSAR meeting will be held between December 11 and December 15, 2023. See **SUPPLEMENTARY INFORMATION** for meeting dates and times and the daily agenda.

ADDRESSES: The meeting will be open to the public and held in-person the NMFS Honolulu Service Center at Pier 38, 1129 N. Nimitz Hwy., Suite 220, Honolulu, HI 96817.

FOR FURTHER INFORMATION CONTACT: T. Todd Jones, Director, Pacific Islands Fisheries Science Center (PIFSC) Fisheries Research and Monitoring Division (FRMD), telephone: (808) 725–5713, or *todd.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION: Scientists from the NMFS PIFSC conducted a benchmark stock assessment of the MHI Deep 7 bottomfish complex. This benchmark assessment built on previous assessments that incorporated knowledge from the fishing community for filtering commercial catch and effort data and incorporated a fishery-independent index of relative abundance. A surplus production model that explicitly accounted for both process and observation errors, and directly estimated maximum sustainable yield (MSY)-based reference points as well as trajectories and projections of biomass and harvest rate was used to determine stock status of Deep7 complex. New modeling software was used to run the production model and estimate the trajectory and status of the Deep 7 complex. In addition to updated modeling software, a number of improvements relative to the 2018 benchmark stock assessment and 2021 update assessment were made for the current benchmark stock assessment. These changes include re-evaluating the contribution of non-commercial catch to the total catch, refining the data filtering and index development procedures, and more fully incorporating information on Deep 7 bottomfish species life-history characteristics into the assessment model.

Meeting Agenda for WPSAR Review

The meeting schedule and agenda are as follows:

Monday, December 11, 2023, 8:30 a.m.–4 p.m.

1. Welcome and Introductions
2. Background information
   a. Objectives and Terms of Reference
   b. Fishery Management
3. History of stock assessments and reviews
4. Stock assessment input data
   a. State of Hawaii Fisher and Dealer Reporting Systems
   b. Non-commercial catch
   c. Life history information
   d. Fishery-independent survey
5. Public Comment (3:30 p.m.)

Tuesday, December 12, 2023, 8:30 a.m.–4 p.m.

1. Presentation and review of stock assessment
2. Public comment (3:30 p.m.)

Wednesday, December 13, 2023, 8:30 a.m.–4 p.m.

1. Continue review of stock assessment

Thursday, December 14, 2023, 8:30 a.m.–4 p.m.

1. Continue review of stock assessment (morning)
2. Public comment (*11 a.m.*)
3. WPSAR Review Panel discussions (afternoon, closed to the public)

Friday, December 15, 2023

1. Continue WPSAR panel discussions (morning, closed to the public)
2. WPSAR Panel Report on Review Outcomes and Recommendations (*1 p.m.–4 p.m.*)
3. Adjourn

The agenda order may change. The meeting will run as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to T. Todd Jones, Director, PIFSC FRMD, telephone: (808) 725–5713, or *todd.jones@noaa.gov* at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–25535 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD538]

Marine Mammals; File No. 23188

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for a permit amendment.

SUMMARY: Notice is hereby given that the Institute of Marine Sciences, University of California at Santa Cruz, 130 McAllister Way, Santa Cruz, CA 95060 (Responsible Party: Daniel Costa, Ph.D.), has applied for an amendment to Scientific Research Permit No. 23188–03.

DATES: Written comments must be received on or before December 20, 2023.

ADDRESSES: The application is available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23188 from the list of available applications. The application and related documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23188 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 23188–03 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 23188, issued on September 25, 2020 (85 FR 63524), authorizes the permit holder to conduct scientific research on northern elephant seals (NES; *Mirounga angustirostris*) in California. The permit activities continue a long-term research program started in 1968 to study NES population growth and status, reproduction, behavioral and physiological adaptations for diving and fasting, general physiology and metabolism, and sensory physiology. Authorized activities include behavioral observations, marking, capture, biological sampling (including skin, blubber, and muscle biopsies), active and passive acoustics, instrumentation, translocation studies, short-term captive holding for laboratory studies, use of hormone challenges and standard clinical tracer techniques, and unmanned aircraft system surveys. The permit authorizes unintentional mortalities of up to 5 NES annually during research, and euthanasia of up to 10 moribund or abandoned NES pups annually. Three amendments to the permit were issued to: increase take numbers and add a new study area (No. 23188–01; April 27, 2021); add new study areas and update methods for acoustic studies (No. 23188–02; November 19, 2021); and update methods for biological sampling and instrumentation (No. 23188–03; February 2, 2022). The permit holder is requesting the permit be amended to include authorization for additional reproductive studies to investigate embryonic diapause in NES. Over a 2-year study period, 39 adult females would be captured, anesthetized, marked, sampled, and instrumented, as currently authorized. Researchers would use a transrectal ultrasound to check for pregnancy and non-pregnant females would then have uterine endoscopy, cytology, lavage, and biopsy sampling. The lavage and biopsy procedures may result in egg, sperm, or blastocyst removal from the uterus. A subset of these females may be captured and sampled twice per year. An additional 390 NES may be unintentionally harassed during these reproductive studies. The amendment would be valid for the duration of the permit, until September 30, 2025.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit amendment. The draft EA is available for review and comment simultaneous with the scientific research permit amendment application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 14, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–25574 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD543]

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 webinar meeting.

DATES: The meeting will be held on Thursday, December 7, 2023 from 1:30 p.m. until 3:30 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet via webinar to continue discussions from their November 13–14, 2023 meeting related to 2024–2025 recreational management measures for summer flounder and scup and 2024 recreational management measures for black sea bass. Specifically, the Monitoring Committee will continue discussions to recommend the appropriate non-preferred coastwide and precautionary default measures (*e.g.,* possession limits, fish size limits, seasons) associated with conservation equivalency for summer flounder and black sea bass, and revisit additional information in support of their recommendation for scup federal waters measures in 2024.

Meeting materials will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–25526 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent and Trademark Resource Center Metrics

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0068 (Patent and Trademark Resource Center Metrics). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before January 19, 2024.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0068

comment'' in the subject line of the message.

• *Federal Rulemaking Portal: http://www.regulations.gov.*

• *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert Berry, Manager, Patent and Trademark Resource Center Program, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7152; or by email at *Robert.Berry@uspto.gov* with ''0651–0068 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Resource Center (PTRC) is authorized under the provision of 35 U.S.C. 2(a)(2), which provides that the United States Patent and Trademark Office (USPTO) shall be responsible for disseminating information with respect to patents and trademarks to the public. The PTRC Program is made up of public, state, and academic libraries. Each participating library designated as a PTRC must fulfill the following requirements: Assist the public in the efficient use of patent and trademark resources; provide free access to patent and trademark resources provided by the USPTO; and send representatives to attend USPTO-hosted PTRC training seminars.

The USPTO seeks to collect information about the public's use of the PTRCs and training provided through the PTRC program. The PTRC Program requirements stipulate that all participating libraries must submit quarterly metrics on the public's use of PTRC services and public outreach efforts provided by the PTRCs. To facilitate that requirement, the USPTO electronically collects these metrics on a quarterly basis. This information collection enables the USPTO to see how customers are being served by the PTRCs and to ascertain what changes may be needed in the types of services provided. These metrics also provide the PTRC Program Office with insight into the trainings it should offer to PTRC librarians.

II. Method of Collection

Electronically submitted to the USPTO.

III. Data

OMB Control Number: 0651–0068.

Forms: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: State, local, and Tribal governments.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 100 respondents.

Estimated Number of Annual Responses: 400 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 30 minutes (0.50 hours) to complete. This includes the time to gather the necessary information, prepare the worksheet, and submit it to the USPTO.

Estimated Total Annual Respondent Burden Hours: 200 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $7,508.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO STATE, LOCAL, AND TRIBAL GOVERNMENT RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual r esponses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [1] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	PTRC Metrics	100	4	400	0.50 (30 minutes)	200	$37.54	$7,508
Total		100		400		200		7,508

Estimated Total Annual Respondent Non-Hourly Cost Burden: $0. There are no capital start-up, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) 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.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–25630 Filed 11–17–23; 8:45 am]

BILLING CODE 3510–16–P

[1] Bureau of Labor Statistics (BLS), Occupation Employment Statistics, wage category 25–4022 for 'Librarians and Media Collections Specialists working in Colleges, Universities, and Professional Schools'; *https://www.bls.gov/oes/current/oes254022.htm.*

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Copies of Crop and Market Information Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the agency. In compliance with the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments, as described below, on the proposed Information Collection Request (''ICR'') titled: Copies of Crop and Market Information Reports.

DATES: Comments must be submitted on or before January 19, 2024.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0015 by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Kennedy, Division of Enforcement, U.S. Commodity Futures Trading Commission, 290 Broadway, New York, NY 10007; (646) 746–9780; email: *ckennedy@cftc.gov* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[1]

Title: ''Copies of Crop and Market Information Reports,'' OMB Control No. 3038–0015. This is a request for extension of a currently approved information collection.

Abstract: The information collected pursuant to this rule, 17 CFR 1.40, is in the public interest and is necessary for market surveillance. Manipulation of commodity futures prices is a violation of the Commodity Exchange Act (Act). Section 9(a)(2) of the Act (7 U.S.C. 13(a)(2)) prohibits the dissemination of false or misleading or knowingly inaccurate reports that affect or tend to affect the prices of commodities. In order to facilitate the enforcement of this provision, Commission regulation 1.40 requires that members of an exchange and FCMs provide upon request copies of any report published or given general circulation which concerns crop or market information that affects or tends to affect the price of any commodity.

With respect to the following collection of information, the CFTC invites comments on:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, usefulness, and clarity of the information to be collected; and
- Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden statement: The burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Entities potentially affected by this action include future commission merchants (''FCMs'') and members of designated contract markets and swap execution facilities.

- *Estimated number of respondents/affected entities:* 10.
- *Estimated annual hours per respondent/response:* 0.17.
- *Estimated total annual burden:* 1.7 hours.
- *Frequency of collection:* On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 15, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–25568 Filed 11–17–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 17 CFR 145.9.

COUNCIL ON ENVIRONMENTAL QUALITY

[CEQ–2023–0005]

Environmental Justice Scorecard

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Request for information.

SUMMARY: The Council on Environmental Quality (CEQ) is issuing this request for information (RFI) to solicit feedback on Phase One of the Environmental Justice Scorecard, which will inform future versions of the Environmental Justice Scorecard.

DATES: CEQ seeks any comments by 11:59 p.m. ET on January 19, 2024.

ADDRESSES: You may submit comments, identified by docket number CEQ–

2023–0005, by any of the following methods:

- *Using the Federal eRulemaking Portal:* visit *https://www.regulations.gov* and follow the instructions for submitting comments. For more information, see *https://www.regulations.gov/faq.*
- By fax to 202–456–6546.
- By mail to Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503 (must be received by January 19, 2024).

Instructions: Your submission must include: ''Council on Environmental Quality,'' and the docket number for this RFI, which is CEQ–2023–0005.

CEQ will publish public comments it receives in response to this notice, including personal information, without change on *https://www.regulations.gov.* Please do not submit any information you consider to be private information, privileged or confidential commercial or financial information, or other information the disclosure of which is restricted by law.

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. Please feel free to respond to as many of the questions as you choose, indicating the number of each question that you are addressing. We encourage you to include your name and contact information, but it is not required. If you are responding on behalf of an organization, we further encourage you to include the organization's name, its type (*e.g.,* academic, non-profit, professional society, community-based organization, industry, government, other), and your role in the organization. You may include references to academic literature or links to online material but please ensure all links are publicly available.

FOR FURTHER INFORMATION CONTACT: Kareem Ihmeidan, Staff Assistant for Environmental Justice, 202–395–5750, *AbdelKareem.I.Ihmeidan@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since day one, President Biden has prioritized environmental justice by launching a whole-of-government effort to confront longstanding environmental injustices and inequities. The Environmental Justice Scorecard, *https://ejscorecard.geoplatform.gov/scorecard/,* is a signature component of this commitment. It is the first-ever government-wide assessment of what the Federal Government is doing to advance environmental justice. The Environmental Justice Scorecard was created at the direction of President Biden pursuant to Executive Order (E.O.) 14008 on *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021).[1] The goals of the Environmental Justice Scorecard include to assess the Federal Government's progress on advancing environmental justice, to provide transparency for the public, and to increase accountability for Federal agencies.

The first version of the Environmental Justice Scorecard, or the Phase One Scorecard, was launched [2] the same day that President Biden signed Executive Order 14096 on *Revitalizing Our Nation's Commitment to Environmental Justice for All* (April 21, 2023).[3] This Executive Order further embeds environmental justice into the work of Federal agencies to achieve real, measurable progress that communities can count on. Among other things, E.O. 14096 defines ''environmental justice'' as the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices. Sec. 2(b), E.O. 14096.

With E.O. 14096, the President is working to ensure that all people—regardless of race, background, income, ability, Tribal affiliation, or zip code—can benefit from the vital safeguards enshrined in our nation's foundational environmental and civil rights laws. That means cleaner air and water, reduced risk for asthma, cancer, and other health burdens, and better access to green space, safe and affordable housing, and clean transportation. This RFI advances the goals of E.O. 14096, including Section 3(a)(vii) on creating opportunities for meaningful engagement.

Phase One of the Environmental Justice Scorecard presents a baseline assessment of actions taken by Federal agencies in 2021 and 2022 to help achieve the Biden-Harris Administration's environmental justice goals. It reports on the progress of 24 Federal agencies in the following categories:

- Advancing the President's Justice40 Initiative;[4]
- Implementing and enforcing environmental and civil rights laws; and
- Embedding environmental justice throughout the Federal Government.

The docket for this RFI includes supplementary material that presents metrics used in the Phase One Scorecard. The specific metrics and actions included for Federal agencies vary based on the type, size, and mission of each agency. For example, some but not all of the Federal agencies participating in the Phase One Scorecard are members of the White House Environmental Justice Interagency Council (IAC) and some but not all have Justice40 covered programs. If data are unavailable for a Federal agency, the corresponding metrics do not appear on that agency's page.

The Phase One Scorecard was developed by the White House Office of Management and Budget (OMB), in coordination with CEQ and the IAC. It was informed by recommendations and feedback from environmental justice stakeholders and experts. In particular, recommendations from the White House Environmental Justice Advisory Council [5] (WHEJAC) and public comments informed its development, including from a Request for Information published in the **Federal Register** in August 2022.[6]

The Phase One Scorecard provides a valuable snapshot of key environmental justice work in progress at a particular point in time, based on available data and metrics. The Environmental Justice Scorecard will be updated annually, with the goal of creating a durable, robust, and comprehensive tool to assess and demonstrate the Federal Government's efforts to secure environmental justice for all.

This RFI is part of the Administration's commitment to

[1] 86 FR 7619 (Feb. 1, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf.*

[2] *https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/.*

[3] 88 FR 25251 (Apr. 26, 2023), *https://www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08955.pdf.*

[4] Justice40, A Whole-of-Government Initiative, *https://www.whitehouse.gov/environmentaljustice/justice40/.*

[5] *https://www.whitehouse.gov/environmentaljustice/white-house-environmental-justice-advisory-council/.*

[6] CEQ, Environmental Justice Scorecard Feedback, Request for Information, 87 FR 47,397 (Aug. 3, 2022), *https://www.govinfo.gov/content/pkg/FR-2022-08-03/pdf/2022-16635.pdf.*

ensuring that environmental justice efforts within the Federal Government, including the development of future versions of the Environmental Justice Scorecard, are informed by the priorities and perspectives of the public, including communities with environmental justice concerns. By soliciting input through this RFI, CEQ and OMB seek input from the public in shaping the vision and goals for the Environmental Justice Scorecard and welcome ideas on ways to improve the public's ability to monitor the Federal Government's progress and hold the Federal Government accountable for delivering results in advancing environmental justice for all.

II. Key Questions for Input

CEQ and OMB seek feedback on the public's experiences using Phase One of the Environmental Justice Scorecard, as well as input for future versions of the Environmental Justice Scorecard. Input may be offered on any aspect of the Environmental Justice Scorecard, but is particularly welcome in response to these questions:

1. How can the Environmental Justice Scorecard improve the way it organizes, displays, or presents data to be more accessible, understandable, and useful for the public, including for communities with environmental justice concerns? Please feel free to provide any examples of scorecards or other publicly accessible tools that Tribal, state, or local governments or private entities use to measure and convey progress that may be helpful to review.

2. What additional metric or metrics of Federal agency action or progress in advancing environmental justice might be relevant and helpful to consider including in future versions of the Environmental Justice Scorecard, such as any metric that may help further reflect the needs and priorities of communities with environmental justice concerns or show how certain Federal investments are benefiting disadvantaged communities, including benefits from Justice40 covered programs? The public is welcome to offer any potential metric or metrics in any of the categories of the Phase One Scorecard (listed above), or any potential new categories. For any potential new metric offered, it would be especially helpful to include information on the following, if possible:

○ Whether the suggested metric would be specific to one Federal agency or cross-cutting (*i.e.,* applicable to all or multiple agencies).

○ Whether the suggested metric would measure or focus on any particular output (such as the number of trainings related to environmental justice for staff conducted by an agency) or outcome (such as a highlight of the benefits of a Justice40 covered program in a disadvantaged community, like improved air quality or drinking water safety).

○ Whether there is any existing example where the suggested metric is already reported or used (*e.g.,* by a single agency or outside of the Federal Government).

3. What kind of qualitative information (such as updates on Federal agency work or milestones that may not be possible to summarize with numbers or data alone) does the public consider most valuable to include or add to a future Scorecard, in addition to quantitative metrics or data?

4. Please feel free to offer any additional category or categories of the Federal Government's work or progress that future versions of the Environmental Justice Scorecard might include to advance the goal of environmental justice.

5. Please feel free to share any additional feedback relevant to Phase One of the Environmental Justice Scorecard or any aspect of a future version of the Environmental Justice Scorecard.

Matthew G. Lee-Ashley,

Chief of Staff.

[FR Doc. 2023–25508 Filed 11–17–23; 8:45 am]

BILLING CODE 3325–F4–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Requisition Number: OSD–4–00002]

TRICARE; Calendar Year (CY) 2024 TRICARE Prime and TRICARE Select Out-of-Pocket Expenses

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of calendar year (CY) 2024 TRICARE Prime and TRICARE Select out-of-pocket expenses.

SUMMARY: This notice provides the CY 2024 TRICARE Prime and TRICARE Select out-of-pocket expenses.

DATES: The CY 2024 rates contained in this notice are effective January 1, 2024.

ADDRESSES: Defense Health Agency (DHA), TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Debra Fisher, telephone (703) 275–6224.

SUPPLEMENTARY INFORMATION: The National Defense Authorization Acts for Fiscal Years 2012 and 2017, and subsequent implementing regulations (*e.g.,* § 199.17 of title 32 of the Code of Federal Regulations), established rates for TRICARE beneficiary out-of-pocket expenses and how they may be increased by the annual cost of living adjustment (COLA) percentage used to increase military retired pay or via budget neutrality rules. The CY 2024 retiree COLA increase is 3.2%.

The DHA has updated the CY 2024 out-of-pocket expenses as shown below:

BILLING CODE 6001–FR–P

Calendar Year 2024 TRICARE Prime and TRICARE Select Out-of-Pocket Expenses
Active Duty Family Members (ADFM) Category
Page 1 of 1

Out of Pocket Expense		Select Group A CY24	Select Group B CY24	Prime* Group A CY24	Prime* Group B CY24
Annual enrollment fee	*Individual*	$0	$0	$0	$0
	Family	$0	$0	$0	$0
Annual deductible	*E1-E4, individual*	$50	$62	$0	$0
	E1-E4, family	$100	$125	$0	$0
	E5 & above, individual	$150	$188	$0	$0
	E5 & above, family	$300	$377	$0	$0
Annual catastrophic cap		$1,000	$1,256	$1,000	$1,256
Preventive visit		$0	$0	$0	$0
Primary care		$27 (IN) 20% (OON)	$18 (IN) 20% (OON)	$0	$0
Specialty care		$38 (IN) 20% (OON)	$31 (IN) 20% (OON)	$0	$0
ER visit		$104 (IN) 20% (OON)	$50 (IN) 20% (OON)	$0	$0
Urgent care center visit		$27 (IN) 20% (OON)	$25 (IN) 20% (OON)	$0	$0
Ambulatory surgery		$25 (IN or OON)	$31 (IN) 20% (OON)	$0	$0
Ambulance, outpatient ground		$79 (IN) 20% (OON)	$18 (IN) 20% (OON)	$0	$0
Ambulance, outpatient air		20% (IN or OON)	20% (IN or OON)	$0	$0
Durable medical equipment		15% (IN) 20% (OON)	10% (IN) 20% (OON)	$0	$0
Inpatient admission		$22.30 per day; $25 min. per admission	$75 per adm. (IN); 20% (OON)	$0	$0
Inpatient SNF/rehab facility		$22.30 per day; $25 min. per admission	$31 per day (IN); $62 per day (OON)	$0	$0

* When TRICARE Prime enrollees other than active duty service members self-refer to specialty or non-emergent

inpatient care without a referral from a network provider and/or authorization from the regional contractor, the TRICARE Point of Service deductible and copayment applies in lieu of TRICARE Prime copayments.

Calendar Year 2024 TRICARE Prime and TRICARE Select Out-of-Pocket Expenses
Retiree Beneficiary Category
Page 1 of 2

Out of Pocket Expense		Select Group A CY24	Select Group B CY24	Prime* Group A CY24	Prime* Group B CY24
Annual enrollment fee	*Individual*	$177.96	$564.96	$363	$438.96
	Family	$355.92	$1,131	$726	$879
Annual deductible	*Individual*	$150	$188 (IN); $377 (OON)	$0	$0
	Family	$300	$377 (IN); $754 (OON)	$0	$0
Annual catastrophic cap		$4,157	$4,399	$3,000	$4,399
Preventive visit		$0	$0	$0	$0
Primary care		$36 (IN) 25% (OON)	$31 (IN) 25% (OON)	$25	$25
Specialty care		$50 (IN) 25% (OON)	$50 (IN) 25% (OON)	$37	$37
ER visit		$139 (IN) 25% (OON)	$100 (IN) 25% (OON)	$75	$75
Urgent care center visit		$36 (IN) 25% (OON)	$50 (IN) 25% (OON)	$37	$37
Ambulatory surgery		20% (IN) 25% (OON)	$119 (IN) 25% (OON)	$75	$75
Ambulance, outpatient ground		$106 (IN) 25% (OON)	$75 (IN) 25% (OON)	$50	$50
Ambulance, outpatient air		25% (IN or OON)	25% (IN or OON)	$20	$20

Note: The calendar year catastrophic cap for TRICARE Select Group A retirees who are survivors of active duty deceased sponsors or medically retired Uniformed Service members and their dependents is $3,000.

Calendar Year 2024 TRICARE Prime and TRICARE Select Out-of-Pocket Expenses Retiree Beneficiary Category Page 2 of 2					
Out of Pocket Expense		Select Group A CY24	Select Group B CY24	Prime* Group A CY24	Prime* Group B CY24
Durable medical equipment		20% (IN) 25% (OON)	20% (IN) 25% (OON)	20%	20%
Inpatient admission	*In-network*	$250/day up to 25% of hospital charges, plus 20% of sep. billed services	$219 per adm	$188 per adm	$188 per adm
	Out of network	ǂ $1,112/day up to 25% of hosp. charges, plus 25% of sep. billed services	25%	$188 per adm	$188 per adm
Inpatient SNF/rehab facility		$250/day up to 25% of hospital charges, plus 20% of sep. billed services (IN); 25% (OON)	$62 per day (IN); lesser of $377 per day or 20% (OON)	$37 per day	$37 per day

ǂ This is the CY23 rate. The CY24 out of pocket expense will be available mid-December once the DRG payment rates are calculated.

* When TRICARE Prime enrollees other than active duty service members self-refer to specialty or non-emergent inpatient care without a referral from a network provider and/or authorization from the regional contractor, the TRICARE Point of Service deductible and copayment applies in lieu of TRICARE Prime copayments.

The CY 2024 rates contained in this notice are effective January 1, 2024.

Dated: November 14, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–25553 Filed 11–17–23; 8:45 am]

BILLING CODE 6001–FR–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Requisition Number: OSD–4–00001]

Membership of the Performance Review Board

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

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the DoD, OSD, Joint Staff, Defense Agencies, and DoD Field Activities, Performance Review Board (PRB) members, to include the U.S. Court of Appeals for the Armed Forces. The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: The board membership is applicable beginning on October 12, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Laura E. Devlin Dominguez, Assistant Director for Office of the Secretary of Defense Senior Executive Management Office, Washington Headquarters Service, Department of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the OSD PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, beginning October 12, 2023.

Office of the Secretary of Defense

Appointing Authority—Dr. Kathleen H. Hicks, Deputy Secretary of Defense
Principal Executive Representative—Ms. Jennifer C. Walsh
Chairperson—Mr. Kevin M. Mulvihill

PRB Panel Members

Steven L. Schleien
Serena Chan
Juanita M. Christensen
Christine M. Condon
Daniel J. Hester
Ashley B. Manning
Robert P. Helfant
Stuart A. Whitehead
Lily M. Zeleke
Rosalie Tinsley
Madeline L. Mortelmans
Stanley E. Thomas
John M. Tenaglia

Pamela M. Franceschi
Raju H. Shah
Jennifer J. Balisle
Vernita D. Harris
Andrew T. Walter
Kirstin H. Riesbeck
Paul D. Mann
Silvana Rubino-Hallman
Brent C. Harvey
Debbra M. Caw
Leigh E. Method
Jennifer L. Desautel
Sonya I. Ebright
Leonard G. Litton

PRB Panel Members—Alternates

Austin Long
Karyn A. Runstrom
Cherry L. Wilcoxon
Robin L. Farley
John E. Kreul
Kenneth B. Handelman
Christopher S. Argo
Christopher A. Paczkowski
Raymond D. O'Toole, Jr.

Dated: November 14, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–25552 Filed 11–17–23; 8:45 am]

BILLING CODE 6001–FR–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: These appointments are effective on November 30, 2023.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: LeMont Neal by telephone at (202) 826–9667, or by email at *LemontN@dnfsb.gov.*

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of the senior executives' performance, the executives' responses, and the higher-level officials' comments on the initial summary rating. In addition, the PRB will recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Andrea Kock, Deputy Office Director for Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission
Delores Thompson, Counsel to the Inspector General, U.S. Department of Labor, Office of Inspector General, Office of Legal Services
Suzann K. Gallagher, Deputy Assistant Inspector General, Investigative Operations, Department of Labor, Office of Inspector General

Authority: 5 U.S.C. 4314.

Dated: November 15, 2023.

Joyce Connery,

Chair.

[FR Doc. 2023–25620 Filed 11–17–23; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0194]

Agency Information Collection Activities; Comment Request; Statewide Family Engagement Centers—Annual Performance Reporting Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 19, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0194. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, (202) 453–6136.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Statewide Family Engagement Centers—Annual Performance Reporting Form.

OMB Control Number: 1810–0750.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 600.

Abstract: This is a request for an extension of an approved information collection to collect the Annual Performance Report (APR) for the Statewide Family Engagement Centers (SFEC) program. There is an increase in the number of respondents and total burden hours due to an adjustment to the estimated number of respondents. The collection of this information is part of the government-wide effort to improve the performance and accountability of all federal programs. Under the Uniform Guidance and EDGAR, recipients of federal awards are required to submit performance and financial expenditure information. The program-level performance measures and budget information for the SFEC program are reported in the APR. The APR is required under 2 CFR 200.328 and 34 CFR 75.118 and 75.590. It provides data on the status of funded projects that correspond to the scope and objectives established in the approved applications and any amendments. To ensure that accurate and reliable data are reported to Congress on program implementation and performance outcomes, the SFEC APR collects data from grantees in a consistent format to calculate these data in the aggregate.

Dated: November 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25523 Filed 11–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0162]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Reporting Additional Direct Assessment Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 20, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Reporting Additional Direct Assessment Programs.

OMB Control Number: 1845–0162.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 36.

Total Estimated Number of Annual Burden Hours: 18.

Abstract: The Department of Education is requesting an extension without change of the current information collection 1845–0162, Reporting Additional Direct Assessment Programs. 34 CFR 600.21 requires an institution to only report the addition of a second or subsequent direct assessment program without the review and approval of the Department when it previously been awarded such approval. The regulations also require an institution to report the establishment of a written arrangement between the eligible institution and an ineligible institution or organization in which the ineligible institution or organization would provide more than 25 percent of a program. This information will be provided to the Secretary to ensure that the institutions are properly reporting subsequent direct assessment programs at the same degree level after it has had its first direct assessment program reviewed and shown the ability to create a program that has been approved by the Secretary. The reporting time is 10 days after the first day that the program is offered. The reporting requirement for subsequent programs allows the Department to monitor the growth and development of direct assessment programs.

Dated: November 15, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25577 Filed 11–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0191]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Predominantly Black Institutions Competitive (PBI–C) Grant Program (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 20, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/*

PRAMain to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ashley Hillary, 202–205–4551.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Predominantly Black Institutions Competitive (PBI–C) Grant Program (1894–0001).

OMB Control Number: 1840–0797.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 4,550.

Abstract: The purpose of the Predominantly Black Institutions Competitive (PBI–C) grant program is to support the strengthening of PBIs to carry out programs in the following areas: science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African American males.

This application package includes program background, application instructions, and forms needed to submit a complete application to the Department of Education. Grants are awarded competitively. This information collection is necessary to comply with title III, part F section 371 of the HEA.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: November 15, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25561 Filed 11–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0154]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Charter Online Management and Performance System (COMPS) Developer Grant Profiles

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 20, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Jones, (202) 453–7498.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Charter Online Management and Performance System (COMPS) Developer Grant Profiles.

OMB Control Number: 1810–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 40.

Total Estimated Number of Annual Burden Hours: 320.

Abstract: This request is for a new OMB approval to collect the Grant Profile data from Charter School Programs (CSP) Developer grantees.

The Charter School Programs (CSP) was originally authorized under title V, Part B, subpart 1, sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20 U.S.C. 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (1) provide financial assistance for the planning, program design, and initial implementation of charter schools; (2) increase the number of high-quality charter schools available to students across the United States; (3) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (4) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (5) expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter

schools and meet the challenging State academic standards; (6) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (7) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

The U.S. Department of Education (ED) is requesting authorization to collect data from CSP grantees within the Developer program through a new online platform. In 2022, ED began development of a new data collection system, the Charter Online Management and Performance System (COMPS), designed specifically to reduce the burden of reporting for users and increase validity of the overall data. This new collection consists of questions responsive to the actions established in the program's final rule published in the **Federal Register** on July 6, 2022, as well as the Developer program Notice Inviting Applications (NIA). This collection request is a consolidation of all previously established program data collection efforts and provides a more comprehensive representation of grantee performance.

Dated: November 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25538 Filed 11–17–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 13, 2023; 10 a.m. to 5 p.m. EST

ADDRESSES: This meeting is open to the public. This meeting will be held virtually via Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the FESAC meeting website at: *https://science.osti.gov/fes/fesac/Meetings*.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–2917; email address: *sam.barish@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Committee is to make recommendations on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

Tentative Agenda:

- Office of Science Perspective
- Vision for the Fusion Energy Sciences (FES) Program
- New Charge on the FESAC Long-Range Plan and the Bold Decadal Vision Alignment of the FES Program
- Public Comment
- Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Barish at *sam.barish@science.doe.gov.* Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for review on the Fusion Energy Sciences Advisory Committee website: *https://science.osti.gov/fes/fesac/Meetings*.

Signed in Washington, DC on November 15, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–25621 Filed 11–17–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–1–000]

Cameron Interstate Pipeline, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Holbrook Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Holbrook Expansion Project involving construction and operation of facilities by Cameron Interstate Pipeline, LLC (CIP) in Calcasieu Parish, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on December 13, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to

evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission *before* the opening of this docket on October 4, 2023, you will need to file those comments in Docket No. CP24–1–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

CIP provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP24–1–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

CIP proposes to construct and operate two new natural gas compressor units, and associated aboveground facilities, ancillary and auxiliary equipment at its existing Holbrook Compressor Station in Calcasieu Parish, Louisiana. The Holbrook Expansion Project would provide about 1.1 billion cubic feet of additional natural gas per day transportation capacity to the CIP system. According to CIP, its project would supply feed gas to the Cameron LNG Terminal (in Cameron Parish, Louisiana) to meet shippers' incremental demand.

The Holbrook Expansion Project would consist of the following facilities:

- one new 42,000-horsepower natural gas compressor unit (in a new compressor building);
- one new 5,350-horsepower gas turbine compressor unit (in an existing compressor building);
- 1,100-foot-long 36-inch-diameter discharge header;
- one new warehouse;
- associated ancillary and auxiliary equipment; and
- use of a temporary laydown yard, workspace, and existing access road.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 33.7 acres of land for the aboveground facilities and the discharge header. Following construction, CIP would maintain about 19.7 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 2.4 acres of the operational area would be new permanent easement.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP24–1–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.*

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: November 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25530 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–124–000.

Applicants: Hoosier Wind Project, LLC, Indianapolis Power & Light Company.

Description: Second Supplement to August 23, 2023, Joint Application for Authorization Under Section 203 of the Federal Power Act of Hoosier Wind Project, LLC, et al.

Filed Date: 11/9/23.

Accession Number: 20231109–5293.

Comment Date: 5 p.m. ET 11/20/23.

Docket Numbers: EC24–17–000.

Applicants: Heartland Generation Ltd., TransAlta Corporation.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Heartland Generation Ltd.

Filed Date: 11/8/23.

Accession Number: 20231108–5175.

Comment Date: 5 p.m. ET 11/29/23.

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[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Docket Numbers: EC24–18–000.
Applicants: Innovative Solar 42, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Innovative Solar 42, LLC.
Filed Date: 11/13/23.
Accession Number: 20231113–5277.
Comment Date: 5 p.m. ET 12/4/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–27–000.
Applicants: Longbow BESS, LLC.
Description: Longbow BESS, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 11/13/23.
Accession Number: 20231113–5054.
Comment Date: 5 p.m. ET 12/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1778–000.
Applicants: Midway-Sunset Cogeneration Company.
Description: True-Up and Refund Report of Midway Sunset Cogeneration Company.
Filed Date: 11/8/23.
Accession Number: 20231108–5180.
Comment Date: 5 p.m. ET 11/29/23.

Docket Numbers: ER23–1782–001.
Applicants: Versant Power.
Description: Compliance filing: Order No. 676–J Supplemental Compliance Filing & Request for Waivers (ER23–1782) to be effective 2/1/2024.
Filed Date: 11/13/23.
Accession Number: 20231113–5118.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER23–2646–001.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Hecate Energy Cedar Springs Solar LGIA Deficiency Response to be effective 8/7/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5165.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER23–2937–000; ER23–2938–000; ER23–2939–000.
Applicants: Wolfskin Solar, LLC, Blackwater Solar, LLC, Bird Dog Solar, LLC.
Description: Supplement to September 28, 2023 Bird Dog Solar, LLC, et al. tariff filing.
Filed Date: 11/6/23.
Accession Number: 20231106–5176.
Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: ER24–376–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7135; Queue No. AF2–130 to be effective 1/9/2024.
Filed Date: 11/13/23.
Accession Number: 20231113–5000.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–377–000.
Applicants: Devon Energy Production Company, LP.
Description: Baseline eTariff Filing: Market-Based Rate Tariff to be effective 12/26/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5001.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–378–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP–DEP Surplus Interconnection Related Agreements to be effective 11/11/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5005.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–379–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2023–11–08 CAISO BA Participation in EDAM to be effective 12/31/9998.
Filed Date: 11/13/23.
Accession Number: 20231113–5006.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–380–000.
Applicants: Fowler Ridge II Wind Farm LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/14/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5064.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–381–000.
Applicants: Flat Ridge 2 Wind Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 11/14/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5065.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–382–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original UCSAs, Service Agreement Nos. 7132 and 7133; Queue No. J1180 to be effective 10/19/2023.
Filed Date: 11/13/23
Accession Number: 20231113–5076.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–383–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: MoodyTap CIAC Agreement to be effective 1/1/2024.
Filed Date: 11/13/23.
Accession Number: 20231113–5087.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–384–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 361 to be effective 11/7/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5088.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–385–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 352 to be effective 11/7/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5094.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–386–000.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 2023–11–10—SPS 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 11/13/23.
Accession Number: 20231113–5226.
Comment Date: 5 p.m. ET 12/4/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25532 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–19–000.
Applicants: NMRD Data Center II, LLC, NMRD Data Center III, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of NMRD Data Center II, LLC, et al.
Filed Date: 11/13/23.
Accession Number: 20231113–5363.
Comment Date: 5 p.m. ET 12/4/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–28–000.
Applicants: Danish Fields Storage, LLC.
Description: Danish Fields Storage, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 11/13/23.
Accession Number: 20231113–5281.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: EG24–29–000.
Applicants: Talen Conemaugh LLC.
Description: Talen Conemaugh LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 11/14/23.
Accession Number: 20231114–5119.
Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: EG24–30–000.
Applicants: Talen Keystone LLC.
Description: Talen Keystone LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 11/14/23.
Accession Number: 20231114–5120.
Comment Date: 5 p.m. ET 12/5/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–14–000.
Applicants: City of Tacoma, Department of Public Utilities, Light Division v. California Independent System Operator Corporation.
Description: Complaint of City of Tacoma, Department of Public Utilities, Light Division v. California Independent System Operator Corporation.
Filed Date: 11/13/23.
Accession Number: 20231113–5361.
Comment Date: 5 p.m. ET 12/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–579–001.
Applicants: Lanyard Power Holdings, LLC.
Description: Compliance filing: Lanyard Power Holdings, LLC—Informational Filing Re Transfer of Ownership to be effective N/A.
Filed Date: 11/13/23.
Accession Number: 20231113–5293.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER21–2367–001.
Applicants: Lanyard Power Holdings, LLC.
Description: Compliance filing: Lanyard Power Holdings, LLC—Informational Filing Re Transfer of Ownership to be effective N/A.
Filed Date: 11/13/23.
Accession Number: 20231113–5290.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER23–2407–000.
Applicants: Strauss Wind, LLC.
Description: Supplement to July 14, 2023 Strauss Wind, LLC tariff filing.
Filed Date: 11/9/23.
Accession Number: 20231109–5285.
Comment Date: 5 p.m. ET 11/21/23.

Docket Numbers: ER23–2635–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Submission of Response to Deficiency Letter, Original ISA, SA No. 6571 to be effective 12/31/9998.
Filed Date: 11/13/23.
Accession Number: 20231113–5300.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER23–2673–002.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–11–14_SA 4155 Ameren IL-Coles Wind 2nd Sub E&P (J2128) to be effective 8/22/2023.
Filed Date: 11/14/23.
Accession Number: 20231114–5028.
Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER24–387–000.
Applicants: SAGE Development Authority.
Description: Request for Limited and Prospective Waiver, et. al. of SAGE Development Authority.
Filed Date: 11/13/23.
Accession Number: 20231113–5280.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–388–000.
Applicants: Liberty Utilities (Granite State Electric) Corp.
Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update November 2023 to be effective 6/1/2023.
Filed Date: 11/13/23.
Accession Number: 20231113–5279.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–389–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Attachment Q & Schedule 1 Revisions to be effective 1/13/2024.
Filed Date: 11/13/23.
Accession Number: 20231113–5294.
Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: ER24–390–000.
Applicants: Edwards Calverton Battery Storage, LLC.
Description: Edwards Calverton Battery Storage, LLC submits Prospective Waiver Request of the requirement in Section 25.6.2.3.1 (ii)(2) of Attachment S of the NYISO OATT.
Filed Date: 11/9/23.
Accession Number: 20231109–5295.
Comment Date: 5 p.m. ET 11/30/23.

Docket Numbers: ER24–391–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Niagara Mohawk 205: CRA between NMPC and New York Power Authority (SA2815) to be effective 11/2/2023.
Filed Date: 11/14/23.
Accession Number: 20231114–5021.
Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER24–392–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–11–14_SA 4192 ATC–DPC O&M to be effective 12/6/2023.
Filed Date: 11/14/23.
Accession Number: 20231114–5046.
Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER24–393–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 413, Sun Valley 230kV #1 LGIA between APS and CAWCD to be effective 10/17/2023.
Filed Date: 11/14/23.
Accession Number: 20231114–5065.
Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER24–394–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 414, Sun Valley

230kV #2 LGIA between APS and CAWCD to be effective 10/17/2023.

Filed Date: 11/14/23.

Accession Number: 20231114–5069.

Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER24–395–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 415, Sun Valley 500kV LGIA between APS and CAWCD to be effective 10/17/2023.

Filed Date: 11/14/23.

Accession Number: 20231114–5072.

Comment Date: 5 p.m. ET 12/5/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–18–000.

Applicants: ISO New England Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of ISO New England Inc.

Filed Date: 11/13/23.

Accession Number: 20231113–5362.

Comment Date: 5 p.m. ET 12/4/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: November 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25591 Filed 11–17–23; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–8–000.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: § 284.123 Rate Filing: BHKG Revised Statement of Rates to be effective 11/1/2023.

Filed Date: 11/13/23.

Accession Number: 20231113–5304.

Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: PR24–9–000.

Applicants: Lee 8 Storage Partnership.

Description: § 284.123(g) Rate Filing: Petition for Rate Approval November 2023 to be effective 11/14/2023.

Filed Date: 11/14/23.

Accession Number: 20231114–5041.

Comment Date: 5 p.m. ET 12/5/23.

§ 284.123(g) Protest: 5 p.m. ET 1/16/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–20–001.

Applicants: ANR Pipeline Company.

Description: Compliance filing: OFO Penalty Compliance to be effective 11/3/2023.

Filed Date: 11/14/23.

Accession Number: 20231114–5045.

Comment Date: 5 p.m. ET 11/27/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: November 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25590 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–7–000.

Applicants: Duke Energy Ohio, Inc.

Description: § 284.123(g) Rate Filing: DEO—Revised Operating Statement to Reflect Change in State-Approved Rates to be effective 11/1/2023.

Filed Date: 11/13/23.

Accession Number: 20231113–5007.

Comment Date: 5 p.m. ET 12/4/23.

§ 284.123(g) Protest: 5 p.m. ET 1/12/24.

Docket Numbers: RP24–151–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Capacity Release—NR Agmts for JP Morgan 289474 & 289475 to be effective 11/1/2023.

Filed Date: 11/13/23.

Accession Number: 20231113–5004.

Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: RP24–152–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—

Replacement Shippers—Termination Filg to be effective 12/14/2023.

Filed Date: 11/13/23.

Accession Number: 20231113–5132.

Comment Date: 5 p.m. ET 11/27/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP23–1138–001.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Compliance filing: In-Service Date Merger Filing to be effective 11/1/2023.

Filed Date: 11/9/23.

Accession Number: 20231109–5242.

Comment Date: 5 p.m. ET 11/21/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: November 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25531 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2736–046]

Idaho Power Company; Notice of Tribal Consultation Meeting

a. *Project Name and Number:* American Falls Hydroelectric Project No. 2736–046.

b. *Applicant:* Idaho Power Company.

c. *Date and Time of Meeting:* November 27, 2023, from 11:00 a.m. to 12:30 p.m. Eastern Standard Time.

d. *FERC Contact:* Golbahar Mirhosseini, *Golbahar.Mirhosseini@ferc.gov.*

e. *Purpose of Meeting:* Commission staff will hold a meeting with staff from the Shoshone-Bannock Tribes to discuss the Tribe's comments on scoping document and any concerns regarding the proposed American Falls Hydroelectric Project. The meeting will be held remotely via Microsoft Teams.

f. All local, State, and Federal agencies, Native American Tribes, and other interested parties are invited to attend the meeting; however, participation will be limited to representation of the Shoshone-Bannock Tribe and the Commission's representatives. A summary of the meeting will be placed in the public record of this proceeding.

g. Please email Golbahar Mirhosseini at *golbahar.mirhosseini@ferc.gov* by November 22, 2023 at 4:30 p.m. EST, to RSVP and to receive specific instructions on how to participate.

Dated: November 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25528 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–359–000]

Crow Creek Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Crow Creek Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 4, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25592 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2444–042]

Northern States Power Corporation; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2444–042.

c. *Date Filed:* July 21, 2023.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydroelectric Project (project).

f. *Location:* On the White River in Ashland and Bayfield Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Matthew Miller, Environmental Analyst, Northern States Power Company—Wisconsin, 1414 W Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702; Phone at (715) 737–1353, or email at *matthew.j.miller@xcelenergy.com.*

i. *FERC Contact:* Taconya D. Goar at (202) 502–8394, or *Taconya.Goar@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* December 13, 2023.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the project name and docket number on the first page: White River Hydroelectric Project P–2444–042.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. *Project Description:* The White River Project includes an earthen and concrete dam that includes: (1) a 400-foot-long north earthen embankment; (2) a concrete section that includes: (a) a north abutment; (b) a 20-foot-long intake structure equipped with a trashrack; (c) a 35-foot-high spillway with two 25-foot-long bays that each contain a Tainter gate; and (d) a south abutment; and (3) a 300-foot-long south earthen embankment. The dam creates an impoundment that has a surface area of 39.9 acres at a normal elevation of 711.6 feet National Geodetic Vertical Datum of 1929 (NGVD 29). From the impoundment, water flows through the intake structure to a 1,345-foot-long concrete pipe that conveys water to a steel surge tank and two 30-foot-long steel penstocks. The penstocks provide water to a 700-kilowatt (kW) turbine-generator and a 500-kW turbine-generator located in a powerhouse, for a total installed capacity of 1,200 kW. Water is discharged from the turbines to the White River. Electricity generated at the project is transmitted to the electric grid via a 220-foot-long, 2.4-kilovolt (kV) transmission line and a 2.4/69-kV step-up transformer. The average annual energy production of the White River Project from 2017 through 2022 was 4,927 megawatt-hours.

Project recreation facilities include: (1) a boat access site and canoe portage take-out site at the north embankment of the dam; (2) an approximately 2,260-foot-long canoe portage trail; (3) a canoe put-in site approximately 90 feet downstream of the powerhouse; and (4) a tailrace fishing area.

The current license requires Northern States Power to operate in a run-of-river mode and to maintain the impoundment at an elevation between 710.4 and 711.6 feet NGVD 29. The license also a minimum bypassed reach flow of 16 cubic feet per second (cfs) or inflow, whichever is less.

Northern States Power does not propose to add any new project facilities. However, Northern States Power proposes to decrease the amount of land and water enclosed by the project boundary from 136.4 to 52.7 acres.

Northern States Power proposes to continue operating the project in a run-of-river mode and maintaining the surface elevation of the impoundment between 710.4 and 711.6 feet NGVD 29. Northern States Power also proposes to: (1) continue releasing a minimum bypassed reach flow of 16 cfs or inflow, whichever is less; (2) develop an operation compliance monitoring plan; (3) conduct shoreline erosion surveys every ten years; (4) develop an invasive species monitoring plan; (5) pass woody debris from the impoundment to the bypassed reach; (6) replace recreational signage; (7) maintain project recreation facilities; (8) implement the State of Wisconsin's broad incidental take permits/authorizations for Wisconsin cave bats and wood turtles; (9) avoid vegetation management and construction activities within 660 feet of bald eagle nests during the nesting season; and (10) develop a historic properties management plan.

m. A copy of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the project's docket number excluding the last three digits in the docket number field to access the document (P–2444). For assistance, contact FERC Online Support.

You may also register at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as

interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

n. *Scoping Process:* Pursuant to the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS.

At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued November 13, 2023.

Copies of the SD1 outlining the proposed project and subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Dated: November 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25529 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–377–000]

Devon Energy Production Company, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Devon Energy Production Company, LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 4, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 14, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25589 Filed 11–17–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0356; FRL–11360–01–OCSPP]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUP) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0356 is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1400. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. EUP

EPA has issued the following EUPs:

1. *8917–EUP–3.* EPA–HQ–OPP–2020–0233. Issuance. J.R. Simplot Company, 5369 W Irving Street, Boise, ID 83706. This EUP allows the use of 0.041 pounds of the plant-incorporated protectant (PIP) protein BLB2, 0.21 pounds of the PIP protein AMR3, 0.21 pounds of the PIP protein VNT1, and 0.17 pounds of the PIP Potato virus Y (PVY) siRNA on 165 acres of potato to evaluate the control of potato late blight disease and PVY. The program is authorized only in the States of Arizona, Colorado, Idaho, Michigan, Minnesota, North Dakota, Pennsylvania, Texas, Utah, Washington, and Wisconsin. The EUP is effective from March 15, 2023, to April 1, 2024.

2. *524–EUP–117.* EPA–HQ–OPP–2022–0036. Issuance. Bayer CropScience LP 800 North Lindbergh Blvd. St. Louis, Missouri 63167. This EUP allows the use of 0.93 grams of the plant-incorporated protectant (PIP), GA20ox_SUP miRNA and the genetic material necessary for is production on 10,000 acres of corn to evaluate MON 94804 short stature maize, stack combinations with registered insect-protected corn, and controls. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Iowa, Illinois, Kansas, Louisiana, Michigan, Minnesota, Montana, Missouri, North Carolina, North Dakota, Nebraska, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and the Territory of Puerto Rico. The EUP is effective from September 20, 2022, to February 28, 2025.

3. *94614–EUP–1.* EPA–HQ–OPP–2021–0270. Issuance. GreenLight Biosciences, Inc. 200 Boston Ave., Suite 1000, Medford, MA 02155. This EUP allows the use of 8.504 pounds of the active ingredient, Ledprona (CAS No. 2433753–68–3) double-stranded RNA on 318 acres of potato to evaluate the control of Colorado Potato Beetle. The program is authorized only in the States of Idaho, Maine, Michigan, Minnesota, New York, Noth Dakota, Oregon, Virginia, Wisconsin, and Washington. The EUP is effective from May 4, 2023, to April 30, 2025.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 15, 2023.

Madison Le,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2023–25575 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11351–01–R6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent for De Minimus Landowner Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed CERCLA section 122(g)(4) De Minimus Landowner Administrative Settlement Agreement for Parties (''Proposed Agreement'') associated with the Fansteel Metals/FMRI Site in Muskogee, Oklahoma (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under section 107(a) of CERCLA, against The Port of Muskogee/Landowners (''Settling Party'') for EPA response costs at the Fansteel Metals/FMRI Superfund Site located in Muskogee, Oklahoma. The settlement is non-monetary, but The Port of Muskogee/Landowners agree to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be received on or before December 20, 2023.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Elizabeth Pletan at *pletan.elizabeth@epa.gov.*

Comments must be submitted via electronic mail to this same email address and should reference the ''Fansteel Metals/FMRI'' Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–06–23''. Persons without access to electronic mail may call Mrs. Pletan at (214) 665–8525 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Elizabeth Pletan at EPA by phone (214) 665–8525 or email at: *Pletan.elizabeth@epa.gov.*

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–25604 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0015; FRL–11534–01–OCSPP]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period July 1, 2023, to September 30, 2023, to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed after **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0015, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U.S. States and Territories

Arkansas

Department of Agriculture

Specific exemption: EPA authorized the use of thiamethoxam on a maximum of 450,000 acres of rice to control rice stink bug. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.565(b). The authorization was effective July 14, 2023 to October 15, 2023.

California

Department of Pesticide Regulation

Crisis exemption: EPA concurred upon a crisis exemption declared by the California Department of Pesticide Regulation for the use of afidopyropen to control lygus and whitefly in cotton on August 4, 2023. The use season expired on October 31, 2023, and a subsequent specific exemption was also submitted.

Hawaii

Department of Agriculture

Crisis exemption: EPA concurred upon a crisis exemption declared by the Hawaii Department of Agriculture for the use of cypermethrin applied via unmanned aerial vehicles to control Coconut Rhinoceros Beetles in ornamental palm trees on August 16, 2023, and a subsequent quarantine exemption was also submitted.

Louisiana

Department of Agriculture and Forestry

Specific exemption: EPA authorized the use of triclopyr on a maximum of 450,000 acres of sugarcane to control divine nightshade. A time-limited tolerance in connection with this action has been established in 40 CFR 180.417(b). The specific exemption was authorized on September 20, 2023, and effective October 1, 2023 to May 31, 2024.

Mississippi

Department of Agriculture and Commerce

Specific exemption: EPA authorized the use of thiamethoxam on a maximum of 60,000 acres of rice to control rice stink bug. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.565(b). The authorization was effective July 14, 2023 to October 15, 2023.

Missouri

Department of Agriculture

Specific exemption: EPA authorized the use of thiamethoxam on a maximum of 60,000 acres of rice to control rice stink bug. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.565(b). The authorization was effective July 14, 2023 to October 15, 2023.

South Dakota

Department of Agriculture and Natural Resources

Crisis exemption: EPA concurred upon a crisis exemption declared by the South Dakota Department of Agriculture and Natural Resources for the use of malathion to control red sunflower seed weevil in sunflower on August 16, 2023. The 15-day crisis exemption program expired on August 31, 2023.

B. Federal Departments and Agencies

National Aeronautics and Space Administration

Specific exemption: EPA authorized the use of ortho-phthaldehyde, incorporated into a porous resin, to treat and protect the International Space Station (ISS) internal active thermal control system (IATCS) coolant fluid from growth of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. This request was granted because, without this use, the ISS would have no means

to control organisms in the IATCS since there are no registered alternatives available that meet the required criteria. This emergency request proposed a use of a new (unregistered) chemical and in accordance with the requirements at 40 CFR 166.24(a)(1), a notice of receipt published in the **Federal Register** on August 25, 2023, to allow a public comment period that closed on September 11, 2023. The specific exemption was authorized on September 29, 2023, and effective October 7, 2023 to October 7, 2024.

C. Annual Report of Crisis Exemptions Declared and Revoked

Three crisis exemptions were declared, and zero crisis exemptions were revoked between October 1, 2022, and September 30, 2023.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 13, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–25602 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2023–0396; FRL 11285–01–OW]

Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information (RFI).

SUMMARY: To support further development of multiple funding programs for water infrastructure subject to the requirements of the Build America, Buy America Act, the Environmental Protection Agency (EPA) invites public comment to inform the domestic availability of multiple products used in the construction, alteration, and/or maintenance of water infrastructure. The EPA is inviting comments to enable the agency to have the most comprehensive and current information available on the domestic market for BABA-covered products for its programs and the water infrastructure programs of other agencies. The EPA, along with the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, the U.S. Department of Housing and Urban Development, the Federal Emergency Management Agency, the Department of Transportation, and the U.S. Department of the Interior, are especially interested in comments detailing domestic materials sourcing, market readiness, other product supply considerations, and whether specific water infrastructure products or their components are manufactured in the United States.

DATES: Comments must be received on or before December 20, 2023, to allow for their consideration during development of these funding programs. The EPA may consider comments received after the due date to the extent practicable.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2023–0396, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.*
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Timothy Connor, Chemical Engineer, Office of Wastewater Management at (202) 566–1059, or via email at *connor.timothy@epa.gov;* or Leslie Corcelli, Physical Scientist, Office of Ground Water and Drinking Water at (202) 564–3825, or *corcelli.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2023–0396, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information, Proprietary Business Information, or other information where disclosure is restricted by statute. If you wish to submit information containing CBI, contact Timothy Connor (*connor.timothy@epa.gov*) with any questions on the EPA's secure CBI protocol or to initiate Agency procedures for submitting confidential information. After contacting the EPA regarding your intent to submit CBI, a secure data exchange will be initiated and detailed instructions will be provided. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

The Infrastructure Investments and Jobs Act (Pub. L. 117–58, Nov. 15, 2021) provides $50 billion of new funding for water infrastructure, funding that includes domestic content requirements (see details below). These developments provide an opportunity for significant expansion of domestic capacity. Additionally, the IIJA and the Inflation Reduction Act (Pub. L. 117–69, Aug. 16, 2022) collectively provide more than $10 billion of additional funding to the Department of Interior, Bureau of Reclamation for aging infrastructure, water delivery systems for rural communities, and to increase water supply. The EPA wishes to work in coordination with other agencies and with private industry to provide clear and consistent demand signals for products used in water infrastructure projects.

The purpose of this Request for Information (RFI) is to improve Federal agencies' understanding of the current state of the domestic market for products required to service drinking, agricultural, wastewater treatment and delivery systems.

The Build America, Buy America Act requires iron, steel, manufactured

products, and construction materials used in infrastructure projects funded by Federal financial assistance to be produced in the United States. While BABA provides the opportunity for the EPA and other agencies to issue certain waivers to these requirements, approval depends on many factors, including availability of domestically sourced materials and products. Responses to this RFI will improve the agencies' understanding of the current domestic market for these products to effectively implement BABA for projects funded by its water infrastructure programs and to evaluate the potential need for short-term product waivers from BABA requirements if products are unavailable.

In this RFI, the agency provides a brief background of water infrastructure programs in the EPA's Office of Water, includes background information on BABA provisions, and requests comments and responses regarding products or categories of products for specific areas of interest. This RFI also includes guidance on submitting comments, procedures for submitting CBI, and where to find additional information.

Responding to This RFI

Please indicate in your written comments the area of interest (product or category of product) and the topic number(s) below you are commenting on and provide specific examples or information to illustrate your comments where possible. You do not need to address every topic and should focus on those where you have relevant expertise or experience. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data are available, but non-public, describe such data to the extent permissible. Responses with specific data are especially useful. As discussed in Section I, CBI is protected from public disclosure when properly submitted.

Background

In this section, the agency provides background information on the Office of Water infrastructure programs subject to the BABA requirements. The IIJA, also known as the Bipartisan Infrastructure Law, appropriated $50 billion to the EPA to strengthen the nation's drinking water and wastewater infrastructure. The IIJA includes BABA, establishing new and expanded domestic preference requirements for infrastructure projects that receive Federal financial assistance. (Pub. L. 117–58, Nov. 15, 2021, sec. 70901–52). Importantly, BABA requirements apply to all Federal financial assistance programs that include infrastructure projects. Currently, the EPA's Office of Water administers at least seventeen programs that provide Federal financial assistance for water infrastructure, including the Drinking Water State Revolving Fund (DWSRF) program, the Clean Water State Revolving Fund (CWSRF) program, and the Water Infrastructure Finance and Innovation Act (WIFIA) program. These programs address critical water infrastructure needs through construction, alteration, or repair of water, wastewater, and stormwater infrastructure, including, but not limited to, lead service line replacement, water quality improvements, source water protection, treatment of emerging contaminants, and climate resilience.

Through this RFI, the EPA seeks information regarding the domestic availability of specific water infrastructure products identified in this notice. The agency is interested in promptly obtaining more information on this and other issues discussed in this notice to assess if enough products/systems are currently available to comply with BABA requirements or whether sufficient products would be available in the future, and if so, when. This information will also be supplied to USDA, USACE, FEMA, HUD, DOT, and Interior which also manage water infrastructure programs.

Build America, Buy America Act

BABA requires each covered Federal agency to ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure. . . [are] obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States'' except if a waiver is granted. (Pub. L. 117–58, sec. 70914.) These requirements apply to an entire infrastructure project funded by Federal financial assistance, including those funded by the EPA water infrastructure programs, even if it is also funded by non-Federal funds. The EPA is committed to ensuring strong and effective BABA implementation and compliance.

For all predominantly iron or steel products used in infrastructure projects that involve the obligation of Federal financial assistance, all manufacturing processes of the iron and/or steel components, beginning with initial melting and including application of a coating, must occur in the United States (matching the American Iron and Steel statutory requirements). (Pub. L. 117–58, sec. 70912(6)(A).) Per the ''Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs'' dated November 3, 2022, the EPA interprets a predominantly iron and steel product as ''. . . made primarily (more than 50 percent) of iron and/or steel by materials cost . . ..'' This is consistent with the American Iron and Steel statutory requirements.

Manufactured products must be produced in the United States, meaning the final point of manufacturing must occur in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. (Pub. L. 117–58, sec. 70912(6)(B).)

For construction materials, all manufacturing processes must occur in the United States. (Pub. L. 117–58, sec. 70912(6)(c).) Construction materials include incorporated products primarily made of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride), fiber optic cable (including drop cable), optical fiber, glass, lumber, engineered wood, and drywall. (Pub. L. 117–58, sec. 70911(5) and 2 CFR 184.6.)

Request for Comments and Information

In this section, the agency describes four general topics that it anticipates will be addressed for the products or categories of products listed below. To inform BABA implementation for the EPA's Office of Water and the additional Federal water infrastructure programs, including those administered by USDA, USACE, FEMA, HUD, DOT, and Interior, the EPA requests comments and information from the public on the following products or categories of products:

- lead service line replacement components (including but not limited to, service line, service saddle, corporation stop, curb stops, curb stop boxes and lids, service line fittings, water meters, meter setters, meter boxes, check valves and shut-off/isolation valves);
- valve actuators (electric/pneumatic/manual);
- pumps and pump motors;
- stainless steel products and domestic mills, especially small diameter pipe and fittings;
- PFAS treatment systems and media, especially granular activated carbon (GAC);
- controls and switches;
- analytical instrumentation;

• supervisory control and data acquisition (SCADA) systems;
• backup power products and systems;
• blowers and aeration equipment;
• gear reducers;
• drives (including variable frequency drives (VFDs));
• ultraviolet (UV) water treatment systems;
• membrane and other filtration systems (*e.g.,* ion exchange, membrane, and reverse osmosis);
• clarifier mechanisms;
• disinfection systems;
• conveyors;
• dewatering equipment (such as compressors and presses, including belt presses);
• floating surface aerators;
• ozone generators;
• measurement sensors;
• water meters and associated communications devices;
• automated level control gates; and
• other critical water infrastructure products, including whether they comply with applicable BABA requirements.

For each of these products or categories of products and based on your current understanding of BABA requirements, the EPA is requesting the following information about the following four general topics: domestic materials sourcing and manufacturing, market readiness, delivery lead times and other. At the beginning of your response, please specify the products for which you are providing an answer:

Products: Please clearly identify the products or categories of products for which you are providing a response. If you are referring to ''other critical water infrastructure products and systems,'' please provide a detailed description of the product or system.

1. *Domestic Materials Sourcing and Manufacturing:*

a. For each of the products or categories of products you identified, please specify whether the product meets BABA requirements (described above) or is currently manufactured in the United States to meet a domestic final assembly condition. (Yes or no).

b. Please identify whether the products in your response fall within the iron and steel, manufactured products, or construction materials categories of BABA.

c. If you answered ''Yes'' to Topic 1(a), to the best of your knowledge.

i. Please identify all manufacturers that can either meet BABA requirements or can currently manufacture products or categories of products you specified in the United States. For products that meet the condition of manufactured in the United States, please identify the manufacturing location and percentage of components manufactured in the United States as calculated by cost of components (if known).

ii. What is the current production capacity of the products that can meet BABA requirements?

iii. What is the anticipated growth in BABA-compliant capacity over the next five years? Does this anticipated growth consider the more than $50 billion in increased funding described above? Please explain.

iv. For products able to meet BABA requirements, what is the estimated lead time from purchase order to delivery to the project site? Has this lead time increased or decreased in recent years?

d. If you answered ''No'' to Topic 1a:

i. What actions are manufacturers taking/could take to increase the manufacturing of products that will meet BABA requirements?

ii. What additional support or incentives (*e.g.,* financial, rulemaking certainty, etc.) are needed to ensure a sufficient supply of products that meet BABA requirements?

iii. How long might it take to implement the steps needed to increase or begin production of BABA compliant products?

iv. If a plan is in place to manufacture BABA compliant products, what is the volume of specific products that will follow BABA requirements and in what time frame?

v. Will the volume of BABA compliant products be ramped up over time, and, if so, at what annual growth rate?

vi. What are the limiting factors for the product's ability to meet criteria for BABA compliance? For example, are there components of these products for which it is hard to meet BABA requirements? Please describe each component separately and indicate approximately what percent of component value it represents.

2. *Market Readiness:*

a. For all products specified in Topic 1(a), provide your observations on the current and near-term demand expected for these products or categories of products. Does this estimate of future demand consider the more than $50 billion in increased funding described above? Please explain.

b. Provide information regarding whether the current and/or near-term manufacturing capacity would be adequate to meet the expected market demand.

Please specify any factors helping or preventing the industry from meeting the expected demand today and in the near-term and provide information on the current and expected availability or unavailability of key components or sub-components of the product or category of products you specified.

c. Are there supply chain issues that make it difficult to credibly communicate the existence of increased demand, or to credibly commit that such demand will be forthcoming? If so, please describe as specifically as possible.

3. Timing:

a. Where known, for each product/category of products specified in Topic 1, specify the current range of expected product delivery timeframes. Are any existing supply chain delays applicable or anticipated for the product(s) or critical components of the product(s)?

b. Provide information, if available, on expected delivery timeframe outlooks through the near-term future. Provide information, if known, on whether current timing delivery concerns are related to a temporary disruption.

c. Provide information on the current and expected near-term average customer delivery time.

d. Provide information regarding global supply chain constraints, local permitting, safety requirements and needs that may affect delivery timeframes or extend installation time.

4. *Other Practical Considerations:* Please specify any other considerations for the EPA regarding production, products, systems, equipment, or components of products used in water infrastructure.

Radhika Fox,

Assistant Administrator.

[FR Doc. 2023–25515 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11549–01–R6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Issuance—Class I Hazardous Waste Injection; Rubicon LLC, Geismar Louisiana Facility, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition issuance.

SUMMARY: Notice is hereby given that an issuance of an exemption to the land disposal restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, is

granted to Rubicon LLC for one Class I hazardous waste injection well at the Geismar Louisiana Facility located in Geismar, Louisiana.

DATES: This action was effective as of November 6, 2023.

ADDRESSES: Copies of the petition issuance and pertinent information relating thereto are on file at the following location: Environmental Protection Agency (EPA), Region 6, Water Division, Safe Drinking Water Branch (6WD–D), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Ian Ussery, Physical Scientist, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–6639.

SUPPLEMENTARY INFORMATION: As required by 40 CFR part 148, Rubicon LLC adequately demonstrated to the EPA by the petition issuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by the Geismar Louisiana Facility, of the specific restricted hazardous wastes identified in this exemption issuance, into Class I hazardous waste injection Well WDW–6 until December 31, 2040, unless EPA terminates this exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice comment period started on April 6, 2023, and closed on May 22, 2023. No comments were received. EPA made significant edits to the fact sheet after the public comment period including naming the petition an issuance instead of a reissuance and clarifying portions of the geology section. A second comment period was started on September 7th, 2023, and closed on October 23rd, 2023. No comments were received. This decision constitutes final Agency action, and there is no Administrative appeal.

Dated: November 14, 2023.

Dzung Kim Ngo Kidd,

Acting Director, Water Division, Region 6.

[FR Doc. 2023–25605 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–SFUND–2023–0446; FRL–11373–01–Region 5]

Proposed CERCLA Administrative Cost Recovery Settlement; Seerley Road Site, Indianapolis, Indiana [EPA Agreement V–W–24–C–001]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 5, of a proposed administrative settlement for recovery of past response costs concerning the Seerley Rd Fire Site (Site) in Indianapolis, Indiana with the following parties: Steven Williamson and Joel I. Williamson Junior, as the Settling Parties and Respondents. The settlement requires the Respondents to pay $800,000 in past response costs. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA. For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the cost recovery component of this settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at *www.epa.gov/superfund/seerley-road-fire.*

DATES: Comments must be submitted on or before December 20, 2023.

ADDRESSES: The proposed settlement is available for public inspection at *www.epa.gov/superfund/seerley-road-fire.* Submit your comments, identified by Docket ID No. EPA–R05–SFUND–2023–0446, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Brooks, Investigator, EPA, Region 5, Superfund & Emergency Management Division, 77 West Jackson Blvd., Chicago, IL 60604; email: *brooks.eric@epa.gov;* phone: (312) 353–8655.

Douglas Ballotti,

Director, Superfund & Emergency Management Division, Region 5.

[FR Doc. 2023–25610 Filed 11–17–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Annual Report for Fiscal Year 2023 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its *Annual Report for Fiscal Year 2023 and Three-Year Plan.* Respondents are encouraged to comment on the content of the annual report and FASAB's project priorities for the next three years.

DATES: Written comments are requested by January 18, 2024.

ADDRESSES: The *Annual Report for Fiscal Year 2023 and Three-Year Plan* is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350. Comments should be sent to *fasab@fasab.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155,

Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: November 15, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–25565 Filed 11–17–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1250; FR ID 185293]

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 January 19, 2024. 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: 3060–1250.

Title: Sections 15.37(k), 74.851(k), and 74.851(l), Consumer Disclosure and Labeling.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents and Responses: 100 respondents; 2,500 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: Third party disclosure requirement (disclosure and labeling requirement).

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303(f), 303(g), and 303(r).

Total Annual Burden: 625 hours.

Total Annual Cost: $62,500.

Needs and Uses: The Commission will submit this information collection as an extension to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the full three-year clearance from them.

The labeling requirement is applicable to persons who manufacture, sell, lease, or offer for sale or lease, wireless microphone or video assist devices *to the extent that these devices are capable of operating on the specific frequencies associated with the 600 MHz service band (617–652 MHz/663–698 MHz).* The Commission recognized that a requirement for consumer disclosure at the point of sale or lease that was previously part of this information collection no longer affects any party since wireless microphone users must have ceased any wireless microphone operations in the 600 MHz service band.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–25520 Filed 11–17–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0812; FR ID 185280]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) 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.

DATES: Written PRA comments should be submitted on or before January 19, 2024. 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: 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.

OMB Control Number: 3060–0812.

Title: Fee Assessment Adjustment, Fee Relief and Fee Exemption.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, businesses and other for-profit entities, not-for-profit entities, Federal Government and State, local and Tribal government.

Number of Respondents and Responses: 574 respondents; 574 responses.

Estimated Time per Response: 0.25–1.25 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these fee collections is contained in 47 U.S.C. 154(i), 154(j), 158, 159, 159a and 303.

Total Annual Burden: 244 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission requires that nonprofit entities seeking a statutory exemption from payment of application or regulatory fees submit documentation, such as an IRS Determination Letter, a state charter indicating nonprofit status, proof of church affiliation indicating tax exempt status or the like, to establish nonprofit status, and if later requested by the Commission, to provide current evidence of exempt status. The Commission allows commercial mobile radio service (CMRS) and broadcast (television and radio) licensees and interstate telecommunications service providers (ITSPs) to submit, prior to the annual regulatory fee payment deadline, updates or corrections to the data the Commission relies upon to assess their annual regulatory fees, to request that their annual regulatory fees be adjusted accordingly. The Commission is permitted by statute to waive, reduce or defer payment of regulatory or application fees upon a showing of good cause and that the relief sought would promote the public interest. Parties seeking waiver, reduction or deferral of their fees submit documentation, such as financial records demonstrating financial hardship, to demonstrate good cause and that the relief sought promotes the public interest.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–25516 Filed 11–17–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 185692]

Deletion of Item From November 15, 2023 Open Meeting

November 13, 2023.

The following items were adopted by the Commission on November 13, 2023 and deleted from the list of items scheduled for consideration at the Wednesday, November 15, 2023, Open Meeting. The items were previously listed in the Commission's Sunshine Notice on Wednesday, November 8, 2023.

5	WIRELESS TELECOMMUNICATIONS	*TITLE:* Amending Amateur Radio Rules for Greater Flexibility in Data Communications (WT Docket No. 16–239). *SUMMARY:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would eliminate the symbol rate (also known as baud rate) limitation and establish a bandwidth limitation that would provide flexibility to use modern digital emissions, thereby promoting innovation and experimentation in the amateur service. The item would also propose removal of the baud rate limitation in several additional bands.
6	WIRELINE COMPETITION	*TITLE:* Reducing Regulatory Requirements for Rural Provider of Long-Distance Access Service (WC Docket No. 22–407). *SUMMARY:* The Commission will consider a Declaratory Ruling and Memorandum Opinion and Order that would grant the Minnesota Independent Equal Access Corporation (MIEAC) relief from dominant carrier regulation with respect to its provision of centralized equal access (CEA) service, and regulate MIEAC as a non-dominant competitive LEC for this service going forward. In light of declining demand, intervening exchange access service regulatory reforms, and technological changes in the voice services marketplace generally, dominant carrier regulation of MIEAC's CEA service is no longer necessary to serve the public interest.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–25518 Filed 11–17–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 5, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *George Ryan Abel, Mount Carmel, Illinois;* to become a member of the Gray Family Control Group, a group acting in

concert, to acquire voting shares of Hutsonville Banc Corp., and thereby indirectly acquire voting shares of Farmers & Merchants Bank of Hutsonville, both of Hutsonville, Illinois.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Jeanette Postier and Stephen Postier, both of York, Nebraska;* to become members of the Postier Family Group, a group acting in concert, to acquire additional voting shares of Henderson State Company, and thereby indirectly acquire additional voting shares of Henderson State Bank, both of Henderson, Nebraska.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25617 Filed 11–17–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 5, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *First New Mexico Financial Corporation, Deming, New Mexico;* to engage *de novo* through its subsidiaries, ArmsLength, LLC, and Five Seven Five, LLC, both of Deming, New Mexico, in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25613 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10390 and CMS–10865]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by December 20, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Quality Reporting Program; *Use:* On July 1, 2014, hospices began using a newly created data collection instrument,

titled the ''Hospice Item Set'' (HIS) V1.00.0. The HIS is used for the collection of quality measure data related to the Hospice Quality Reporting Program (HQRP), and the HIS V1.00.0 specified the collection of data items that supported seven Consensus Based Entity (CBE) endorsed Quality Measures (QMs) for hospice. On April 1, 2017, hospices began using an updated HIS V2.00.0, which includes the same items from the HIS V1.00.0 along with the addition of several new items for use in new measures, measure refinement, patient record matching, and future public reporting. Data collected from the HIS are used to calculate the seven CBE-endorsed QMs and the CBE-endorsed Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission QM.

During the FY 2021 rule, the Hospice Visits when Death is Imminent measure pair was removed and replaced with the claims-based Hospice Visits in Last Days of Life (HVLDL) measure. The reduction in provider burden and costs occurred when CMS replaced the HIS-based HVWDII quality measure via the HIS information collection request that OMB approved on February 16, 2021. CMS is requesting to extend the expiration date. The HIS V3.00.0 consists of data elements that are designed to collect standardized, patient-level data for the following domains of care: pain, respiratory status, medications, patient preferences and beliefs and values. The HIS V3.00.0 was developed specifically for use by hospices and contains data elements that we can use to collect patient-level data to calculate eight CBE endorsed quality measures. *Form Number:* CMS–10390 (OMB control number: 0938–1153); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector (not-for-profit institutions); individuals or households; *Number of Respondents:* 5,640; *Total Annual Responses:* 2,763,850; *Total Annual Hours:* 1,323,883. (For policy questions regarding this collection contact Jermama Keys at (410) 786–7778.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease; *Use:* On April 7, 2022, CMS finalized the national coverage determination (NCD) to cover FDA approved monoclonal antibodies (mAbs) directed against amyloid for the treatment of Alzheimer's disease (AD) under coverage with evidence development (CED) in patients who have a clinical diagnosis of mild cognitive impairment (MCI) due to AD or mild AD dementia, both with confirmed presence of amyloid beta pathology consistent with AD. For anti-amyloid mAbs that have accelerated approval, the mAb may be covered in a randomized controlled trial conducted under an investigational new drug (IND) application or any NIH sponsored trial. For antiamyloid mAbs that have traditional FDA approval (as opposed to accelerated approval), the NCD specifies coverage under CED in CMS approved prospective comparative studies, where data may be collected in a registry. In addition to satisfying the study criteria specified in the NCD, CMS approved studies for anti-amyloid mAbs that have received traditional FDA approval must address all of the questions below:

- Does the antiamyloid mAb meaningfully improve health outcomes (*i.e.,* slow the decline of cognition and function) for patients in broad community practice?
- Do benefits, and harms such as brain hemorrhage and edema, associated with use of the antiamyloid mAb, depend on characteristics of patients, treating clinicians, and settings?
- How do the benefits and harms change over time?

In order to remove the data collection requirement under this coverage with evidence development (CED) NCD or make any other changes to the existing policy, we must formally reopen and reconsider the policy. CMS supported development of a registry, the ''Monoclonal Antibodies Directed Against Amyloid for the Treatment of Alzheimer's Disease CED Study Registry'' (mAb Registry), to facilitate coverage under the NCD. Additionally, CMS is working with multiple organizations preparing to open their own registries. Once more registries are available, they will also be listed at *https://www.cms.gov/medicare/coverage-evidence-development/monoclonalantibodies-directed-against-amyloid-treatment-alzheimers-disease-ad,* and clinicians will be able to choose which registry to participate in.

The data collected and analyzed in the CMS-supported mAb Registry and potential CMS-approved registries will be used by to determine if monoclonal antibodies directed against amyloid for the treatment of Alzheimer's Disease (AD) is reasonable and necessary (*e.g.,* improves health outcomes) for Medicare beneficiaries under section 1862(a)(1)(A) of the Act. CMS is collecting information to learn more about which individuals benefit the most from this drug. CMS refers to this as coverage with evidence development or CED. The information being collected via registry will be analyzed to assist clinicians and patients make informed treatment decisions. Furthermore, data from the mAb Registry will assist the pharmaceutical industry and the Food and Drug Administration (FDA) in surveillance of the quality, safety and efficacy of these types of drugs. *Form Number:* CMS–10865 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 40,000; *Number of Responses:* 40,000; *Total Annual Hours:* 3,320. (For policy questions regarding this collection, contact Lori Ashby at 410–786–6322.)

Dated: November 15, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–25601 Filed 11–17–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #37]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register**

notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 4, 2023.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#37)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRAListing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collections

1. *Title of Information Collection:* Managed Care Rate Setting Guidance; *Type of Information Collection Request:* Revision of an active collection of information request; *Use:* In accordance with 42 CFR 438.7, states must submit to CMS for review and approval all rate certifications for managed care organizations (MCOs), prepaid inpatient health plans (PIHPs), and prepaid ambulatory health plans (PAHPs). The rate certification itself is prepared by a state's actuary who certifies the managed care program's capitation rates as actuarially sound for a specific time period, and documents the rate development process and final certified capitation rates.

Our Medicaid Managed Care Rate Development Guide (otherwise referred to as the ''rate guide'') outlines the rate development standards and CMS' expectations for documentation included in rate certifications such as descriptions of base data used, trend factors to base data, projected benefit and non-benefit costs, and any other considerations or adjustments used when setting capitation rates. The information outlined in the rate guide must be included within the rate certification in adequate detail to allow CMS to determine compliance with applicable provisions of 42 CFR part 438, including that the data, assumptions, and methodologies used for rate development are consistent with generally accepted actuarial principles and practices and that the capitation rates are appropriate for the populations and services to be covered. There is no required template that states' actuaries must utilize for the rate certification, but the guidance outlined in the rate guide serves as a resource for states and their actuaries. Adherence by states and their actuaries to the rate development standards and documentation expectations outlined in the rate guide, will aid in ensuring compliance with the regulations and support CMS's review and approval of actuarially sound capitation rates and associated federal financial participation. *Form Number:* CMS–10398 (#37) (OMB control number: 0938–1148); *Frequency:* Annual; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 137; *Total Annual Hours:* 753. For policy questions regarding this collection contact Rebecca Burch-Mack at 303–844–7355.

Dated: November 15, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–25631 Filed 11–17–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Financing for Early Care and Education: Quality and Access for All (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services seeks approval to collect information to explore the role of Head Start in the early care and education (ECE) financing landscape, as well as how the use of multiple funding sources within a single Head Start program may be associated with the provision of Head Start's comprehensive services and with state-level differences in ECE funding. Survey data will be collected from Head Start program directors and state government administrators.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed data collection seeks to better understand

Head Start's participation in or use of coordinated funding, defined as the piecing together or combining of multiple funding sources. The data collection effort will consist of two surveys: (1) a census survey of Head Start program directors (of any grant recipient with a Head Start grant, Early Head Start grant, or both, or one of their delegate programs), and (2) a census survey of three state government administrative positions in each of the 50 states and Washington, DC (the Head Start Collaboration Office Director, the administrator of state pre-kindergarten funds, and the administrator of the federal Child Care and Development Fund [CCDF]). The surveys will identify the most common approaches to coordinated funding; examine how these approaches relate to the provision of high-quality, comprehensive ECE services in Head Start programs; understand policy levers and conditions that influence Head Start programs' decisions around and ability to coordinate funding; and document how participation in coordinated funding relates to Head Start's engagement with other ECE programs and system efforts. The resulting insights will inform ACF about the prevalence of coordinated funding in Head Start, facilitators and challenges of coordinated funding for Head Start programs, and potential associations with program quality. They will also inform future case studies.

Respondents: Head Start Program Directors, state-based Head Start Collaboration Office Directors, state administrators of state pre-kindergarten funds, and state-based administrators of federal CCDF.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Program Director Survey (Head Start Program Directors or financial administrators)	1,642	1	.83	1,363
ECE State Administrator Survey (State-based Head Start Collaboration Office Directors, administrators of state pre-kindergarten funds, state-based administrators of federal CCDF)	138	1	.67	93

Estimated Total Annual Burden Hours: 1,456.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9835; 42 U.S.C. 9844.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–25607 Filed 11–17–23; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4806]

Implementing Interoperable Systems and Processes for Enhanced Drug Distribution Security Requirements Under Section 582(g)(1) of the Federal Food, Drug, and Cosmetic Act; Establishment of a Public Docket; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is publishing this request for information to better understand the status of trading partners' interoperable systems and processes for enhanced drug distribution security as required by the Food, Drug and Cosmetic Act (FD&C Act).

DATES: Although you can comment at any time, submit either electronic or written information and comments by February 20, 2024 to ensure that the Agency considers your comments for potential future actions.

ADDRESSES: You may submit information and comments 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–N–4806 for ''Implementing Interoperable Systems and Processes for Enhanced Drug Distribution Security Requirements Under Section 582(g)(1) of the Federal Food, Drug, and Cosmetic Act.'' 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.

FOR FURTHER INFORMATION CONTACT:

Sarah Venti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4258, Silver Spring, MD 20993, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Supply Chain Security Act (DSCSA) (Pub. L. 113–54), enacted in 2013, requires trading partners—primarily manufacturers, wholesale distributors, dispensers, and repackagers—to provide, receive and maintain documentation about prescription drugs and their chain of ownership from manufacturer to dispenser as the drugs are distributed in the U.S. supply chain. Before November 27, 2023, trading partners could choose to provide and maintain such information either electronically or in paper format. However, beginning November 27, 2023, the DSCSA requirements changed to include requiring trading partners to provide, receive and maintain documentation about products and ownership only electronically using interoperable systems and processes. Under enhanced drug distribution security requirements in section 582(g)(1) of the FD&C Act (21 U.S.C. 360eee–1(g)(1)), amongst other requirements, trading partners are required to: (1) exchange transaction information and transaction statements in a secure, interoperable, electronic manner for each package; (2) implement systems and processes for package-level verification, including the standardized numerical identifier; and (3) implement systems and processes to facilitate gathering the information necessary to produce the transaction information and statement for each transaction going back to the manufacturer if FDA or a trading partner requests an investigation in the event of a recall or a suspect or illegitimate product.

In August 2023, the Agency published the ''Enhanced Drug Distribution Security Requirements Under Section 582(g)(1) of the Federal Food, Drug, and Cosmetic Act—Compliance Policies (Enhanced Drug Distribution Security Compliance Policies). (See *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/enhanced-drug-distribution-security-requirements-under-section-582g1-federal-food-drug-and-cosmetic.*) This guidance establishes a 1-year ''stabilization period'' to accommodate the additional time trading partners need to implement, troubleshoot, and mature their secure, interoperable, electronic systems and processes while supporting the continued availability of products to patients. Specifically, the guidance describes that, until November 27, 2024, FDA does not intend to take action to enforce requirements for the interoperable, electronic, package level product tracing under section 582(g)(1) of the FD&C Act that went into effect on November 27, 2023. In addition, FDA does not intend to take action to enforce section 582(g)(1)(B) of the FD&C Act with respect to drug product that is introduced in a transaction into commerce by the product's manufacturer or repackager before November 27, 2024, and for subsequent transactions of such product through the product's expiry.

The Enhanced Drug Distribution Security Compliance Policies are intended to provide clarity and flexibility to trading partners to help ensure continued patient access to prescription drugs as the supply chain transitions to the secure, interoperable, electronic product tracing at the package level. The guidance does not provide, and should not be viewed as providing, a justification in delaying efforts by trading partners to implement the enhanced drug distribution security requirements under section 582(g)(1) of the FD&C Act.

Because FDA expects trading partners to use this stabilization period to continue to build and validate secure, interoperable, electronic systems and processes, we are seeking information to confirm trading partners' commitment to and progress on implementing DSCSA requirements for enhanced drug distribution security.

II. Request for Information and Comments

Interested persons are invited to provide detailed information and comments on the progress of their enhanced drug distribution security implementation. This information is intended to facilitate knowledge sharing among trading partners in order to help support successful implementation of secure, interoperable, electronic product tracing at the package level by November 27, 2024. FDA is particularly interested in information related to how your current and planned implementation ensures supply chain

readiness and a stronger and safer drug supply chain including the following:

1. How are you using the stabilization period to:

a. Troubleshoot and mature secure, electronic, interoperable systems and processes for enhanced drug distribution security with upstream trading partners?

b. Troubleshoot and mature secure, electronic, interoperable systems and processes for enhanced drug distribution security with downstream trading partners?

2. What are the most significant challenges you have overcome? What strategies did you employ to overcome those challenges?

3. What aspects of your systems and processes have you successfully operationalized?

4. What are the next steps in your strategy to ensure successful implementation of the enhanced drug distribution security requirements by November 27, 2024?

Dated: November 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–25609 Filed 11–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4718]

Advancing the Development of Therapeutics Through Rare Disease Patient Community Engagement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Advancing the Development of Therapeutics Through Rare Disease Patient Community Engagement.'' Convened by the Duke-Robert J. Margolis, MD Center for Health Policy (Duke-Margolis) in collaboration with FDA and supported by a cooperative agreement between FDA and Duke-Margolis, the workshop will focus on how best to understand patients' experiences living with a rare disease and how to incorporate those experiences, as well as patients' priorities for treatment goals, throughout the drug development process.

DATES: The public meeting will be held virtually on December 14, 2023, from 12 p.m. to 5 p.m. Eastern Time. Either electronic or written comments on this public meeting must be submitted by February 12, 2024. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held virtually using the Zoom platform.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–4718 for ''Advancing the Development of Therapeutics Through Rare Disease Patient Community Engagement.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Stuti Ganatra, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Silver Spring, MD 20993, 301–796–8112, *PatientFocused@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public meeting is intended to facilitate improvements in the treatment of rare diseases and conditions, consistent with the requirements under section 3202 of the Food and Drug Omnibus Reform Act of 2022 (FDORA). Section 3202 of FDORA requires FDA to conduct a number of activities related to improving the treatment of rare diseases and conditions, including the convening of one or more public meetings to address increasing and improving engagement with rare disease patients, rare disease patient groups, and experts on small population studies, in order to improve the understanding of patient burden, treatment options, and the side effects of treatments (see section 3202(d)(2) of FDORA).

II. Topics for Discussion at the Public Meeting

The purpose of this public meeting is to highlight and build upon existing actionable approaches for engaging patients, patient groups, and related experts when developing necessary evidence for rare disease drug approvals. The meeting will address approaches to increasing and improving engagement with rare disease patients, groups representing such patients, rare disease experts, and experts on small population studies, to improve the understanding of how to best understand patients' experiences living with a rare disease and how to incorporate those experiences and priorities throughout the drug development process. This includes understanding patient perspectives on the burden of their condition and any existing treatment options, as well as how their current health status and risk of disease progression may impact willingness to accept risks from treatment side effects.

Meeting updates, the agenda, and background materials (if any) will also be made available at *https://duke.is/4/7yuu* prior to the meeting.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://duke.is/4/7yuu.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Registration will end at 11:59 p.m. Eastern Time on December 13, 2023.

Registration is free and persons interested in attending this public meeting must register to receive a link to the meeting. Registrants will receive a confirmation email after they register.

If you need special accommodations due to a disability, please contact *Margolisevents@duke.edu* no later than November 30, 2023. Please note, closed captioning will be available automatically.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://duke.is/4/7yuu.* The transcript will also be available at *https://www.regulations.gov* and may be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: November 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–25500 Filed 11–17–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a virtual meeting. The meeting will be open to the public via webcast. The committee will discuss and vote on recommendations related to surge capacity for blood and blood products.

DATES: The meeting will take place virtually on January 11, 2024 from approximately 9:00 a.m.—5:00 p.m. Eastern Time (ET). Meeting times are tentative and subject to change. The confirmed times and agenda items for the meeting will be posted on the ACBTSA web page at *https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meetings/2024-01-11/index.html* when this information becomes available.

FOR FURTHER INFORMATION CONTACT: James Berger, Designated Federal Officer for the ACBTSA; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Rockville, MD, 20852. Email: *ACBTSA@hhs.gov.* Phone: 202–795–7608.

SUPPLEMENTARY INFORMATION: On the day of the meeting, please go to *https://www.hhs.gov/live/index.html* to view the meeting. The public will have an opportunity to present their views to the ACBTSA by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide written public comment should review instructions at *https://www.hhs.gov/oidp/advisory-committee/blood-tissue-safety-availability/meetings/2024-01-11/index.html* and respond by midnight January 3, 2024, ET. Written public comments will be accessible to the public on the ACBTSA web page prior to the meeting.

Background and Authority: The ACBTSA is a discretionary Federal advisory committee and is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app), which sets forth standards for the formation and use of advisory committees. The ACBTSA functions to provide advice to the Secretary through the Assistant Secretary for Health on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood and tissue safety issues with national survey and data tools; (2) identification of public health issues that affect availability of blood, blood products, and tissues; (3) broad public health, ethical, and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (*e.g.,* product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues. The Committee has met regularly since its establishment in 1997.

Dated: November 2, 2023.

James J. Berger,

Designated Federal Officer, Advisory Committee on Blood and Tissue Safety and Availability, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2023–25572 Filed 11–17–23; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Sarah Elizabeth Martin (Respondent), who was formerly a Graduate Teaching Assistant, Department of Biological Sciences, Auburn University (AU). Respondent engaged in research misconduct in research included in a grant application submitted for U.S. Public Health Service (PHS) funds, specifically R21 AI159361–01 submitted to the National Institute of Allergy and Infectious Disease (NIAID), National Institutes of Health (NIH), and in research supported by NIAID, NIH, grant R21 AI159361–01. The administrative actions, including debarment for a period of three (3) years followed by supervision for a period of two (2) years, were implemented beginning on November 3, 2023, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Sheila Garrity, JD, MPH, MBA, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Sarah Elizabeth Martin, Auburn University: Based on the report of an investigation conducted by AU and additional analysis conducted by ORI in its oversight review, ORI found that Sarah Elizabeth Martin, who was formerly a Graduate Teaching Assistant, Department of Biological Sciences, AU, engaged in research misconduct in research included in a grant application submitted for PHS funds, specifically R21 AI159361–01 submitted to NIAID, NIH, and in research supported by NIAID, NIH, grant R21 AI159361–01.

ORI found that Respondent engaged in research misconduct by intentionally or knowingly falsifying and/or fabricating experimental data and results obtained under different experimental conditions that were included in one (1) grant application, one (1) published paper, one (1) submitted manuscript, and six (6) presentations as follows:

- R21 AI159361–01, ''The interplay between m^{6}A and viral lncRNA during KSHV replication,'' submitted to NIAID, NIH, on July 15, 2020, Funded Period: March 4, 2021–February 28, 2023.
- The m^{6}A landscape of polyadenylated nuclear (PAN) RNA and its related methylome in the context of KSHV replication. *RNA.* 2021 Sep;27(9):1102–1125. doi: 10.1261/rna.078777.121 (hereafter referred to as ''*RNA* 2021''). Retraction in *RNA.* 2022 Feb;28(2):274. doi: 10.1261/rna.079042.121.
- Determination of m^{6}A frequency utilizing 4SedTTP–RT Ligation Assisted PCR (SLAP) in viral and cellular long non-coding RNAs. Manuscript submitted to *RNA* in 2021 (hereafter referred to as ''*RNA* ms'').
- The dynamic status of N6-methyladenosine modifications of polyadenylated nuclear (PAN) RNA lncRNA and its methylome throughout KSHV replication. Presented at The RNA Institute Mini Symposium, Albany, NY, March 3, 2021 (hereafter referred to as ''RNA Mini 2021'').
- Elucidating the N6-Methyladenosine Landscape of Viral LncRNA in the Context of Kaposi's Sarcoma-Associated Herpesvirus Replication. Poster presented at the NIH/NCI 2021 RNA Biology Symposium, Frederick, MD, April 14, 2021 (hereafter referred to as ''NCI Poster 2021'').
- The m^{6}A epitranscriptomic landscape of polyadenylated nuclear (PAN) RNA.'' Presented at The KSHV 2021 Virtual Meeting, June 21, 2021 (hereafter referred to as ''KSHV Virtual 2021'').
- The epitranscriptomic landscape of viral long non-coding RNA. Presented at the Noncoding RNA World: From Mechanism to Therapy, Virtual, July 21, 2021 (hereafter referred to as ''RNA World 2021'').
- The m^{6}A landscape of polyadenylated nuclear RNA and its related methylome in the context of KSHV replication. Presented at the American Society for Virology Annual Meeting, Virtual, July 19, 2021 (hereafter referred to as ''Virology Virtual 2021'').
- The Dynamics of N6-methladenosine Landscape of PAN RNA during the KSHV Replication. Presented at the 45th Annual International Herpesviruses Workshop, Virtual, August 2, 2021 (hereafter referred to as ''IHW Virtual 2021'').

Additionally, data falsification and/or fabrication were identified in four (4) research records sequestered from Respondent's laboratory files, specifically:

- A_response.pptx
- B_response.pptx
- Response_B_clarified.pptx
- Intermediate.pptx

Specifically, ORI finds that Respondent intentionally or knowingly falsified and/or fabricated:

- Native PAGE blots representing 4*S*edTTP–RT *L*igation *A*ssisted *P*CR (SLAP) analysis for m^{6}A detection on PAN RNA and MALAT1 RNA standards in Figure 2a and 2d, respectively, of *RNA* ms by relabeling and reusing the Native PAGE blot representing SLAP analysis for m^{6}A detection limit on PAN RNA standard in Figure 3A of *RNA* 2021.
- calibration curve for detection of m^{6}A modification at nt position 54 on PAN RNA by SLAP analysis in Figure 2b of *RNA* ms by relabeling and reusing the calibration curve for detection of m^{6}A modification at nt position 63 on PAN RNA by SLAP analysis in Figure 3B of *RNA* 2021.
- Native PAGE blot representing SLAP analysis of PAN RNA at unmodified adenosine position 366nt in Figure 3a of *RNA* ms by relabeling the amplicon size from 103nt in Figure 3C of *RNA* 2021 to 106nt in Figure 3a of *RNA* ms.
- Figure 3a and Figure 4a of *RNA* ms and Figure 3C of *RNA* 2021 by relabeling and reusing the bands and Native PAGE blots to represent SLAP analysis at unmodified adenosine on RNA molecule, specifically:

—in Figure 3a of *RNA* ms and Figure 3C of *RNA* 2021, the same band is used in lanes 1 and 5, from the left, of 410nt sample Native PAGE blot to represent SLAP analysis of PAN RNA at unmodified adenosine position under different experimental conditions. Relabeling and reuse of the same band also occurred in lanes 3 and 7, from the left, of Figure 4a of *RNA* ms to represent SLAP analysis of MALAT1 RNA under different experimental conditions.

—Native PAGE blot representing SLAP analysis of PAN RNA at nt position 410 in Figure 3a of *RNA* ms and Figure 3C of *RNA* 2021 is identical to lanes 3–9 portion of the Native PAGE blot representing SLAP analysis of MALAT1 RNA at nt position 2674 in Figure 4a of *RNA* ms.

- Native PAGE panels in Figure 3b of *RNA* ms by relabeling and reusing lanes 1, 4, 6 and 9 of 18nt panel in Figure 3C of *RNA* 2021 representing amplicon sizes of 183nt for m^{6}A and 106nt for A as lanes 1–4, respectively, for 18nt Replicate 1 panel in Figure 3b of *RNA* ms representing amplification sizes 202nt for m6A and 160nt for A
- Native PAGE panels in Figure 3b of *RNA* ms by relabeling and reusing bands under different experimental conditions, specifically:

—Replicate 1 18nt 48 hpi +4SedTTP group ''202nt, m^{6}A'' band is identical to Replicate 2 18nt 48 hpi +4SedTTP group ''202nt, m6A'' band

—Replicate 2 18nt 0 hpi –4SedTTP group ''160nt, A'' band is identical to

Replicate 2 203nt 0 hpi –4SedTTP group ''103nt, A'' band
—Replicate 2 203nt 0 hpi +4SedTTP group ''103nt, A'' band is identical to Replicate 2 1041nt 48 hpi +4SedTTP group ''75nt, m6A'' band

• Figure 4a of *RNA* ms by using identical bands in lanes 3 and 7, from the left, of the Native PAGE blot representing two different experimental conditions

• Figure 4b of *RNA* ms by using identical bands to represent the m^6A modifications on different samples, specifically:

—lanes presented for replicate 1 of nt position 2515 are identical to lanes for replicate 1 at nt position 2698
—lanes presented in 0 −, 48 − and 48+ samples in replicate 2 of nt position 2515 are identical to lanes for 0 −, 48 − and 48+ samples, respectively, in replicate 2 of nt position 2698
—lane for 0 − sample in replicate 3 of nt position 2515 is identical to lane for 0 − sample in replicate 3 of nt position 2698
—lane for 0 − sample in replicate 1 of nt position 2515 is identical to lane for 48 − sample in replicate 3 of nt position 2698
—lanes for 0+ sample in replicate 1 of nt position 2515, 48+ sample in replicate 3 of nt position 2515, and 0+ samples in replicate 1 of nt position 2698 are identical
—lanes for 48+ sample in replicate 1 of nt position 2515, 0+ sample in replicate 2 of nt position 2515, 48+ sample in replicate 1 of nt position 2698, and 0+ and 48+ samples in replicate 3 of nt position 2698 are identical
—lanes for 0 − sample in replicate 2 of nt position 2515, 48 − sample in replicate 3 of nt position 2515, and 0 − sample in replicate 2 of nt position 2698 are identical
—lanes for 48 − sample in replicate 2 of nt position 2515, 0 − sample in replicate 3 of nt position 2515, 48 − sample in replicate 2 of nt position 2698, and 0 − samples in replicate 3 of nt position 2698 are identical
—lane for 0+ sample in replicate 3 of nt position 2515 is identical to lane for 0+ sample in replicate 2 of nt position 2698

• two original gel images on slides 7–8 of A_response.pptx provided in support of nt position 2515 panels in Figure 4b of *RNA* ms

• two original gel images on slides 9–10 of A_response.pptx provided in support of nt position 2698 panels in Figure 4b of *RNA* ms

• Native PAGE panels in Figure 3C of *RNA* 2021 by relabeling and reusing bands under different experimental conditions, specifically:

—18nt 48–72 hpi +4SedTTP ''183nt m^6A'' bands share a same source image with 203nt 48–72 hpi +4SedTTP ''61nt m^6A'' bands, respectively
—672nt ''98nt A'' sample share a same source bands panel with 1048nt ''95nt A'' sample, except for bands in two lanes corresponding to 8–24 hpi −4SedTTP samples
—In 1041nt panel, ''101nt A'' 72 hpi −4SedTTP and 0 hpi +4SedTTP bands share a same source image with +4SedTTP 8 hpi and +4SedTTP 24 hpi bands, respectively

• Western blot panels for Total Lysate group in Figure 5A of R21 AI159361–01, Figure 4D in *RNA* 2021, Figure [B] on slide 2 in *RNA* Mini 2021, Figure 4D in NCI Poster 2021, Figure d on slide 10 in KSHV Virtual 2021, Figure d on slide 10 in RNA World 2021, and Figure 4D in IHW Virtual 2021, specifically:

—bands for METTL3 0hr, FTO 0hr, and HNRNPC 0hr share a same source image
—bands for METTL3 8hr, FTO 8hr and 72hr, HNRNPC 8hr, 48hr and 72hr, and β-actin 72hr share a same source image
—24hr time point bands for METTL3, FTO, SND1, and HNRNPC share a same source image
—bands for METTL3 48hr, FTO 48hr, SND1 48hr, β-actin 8hr and 48hr share a same source image
—bands for METTL3 72hr, SND1 72hr, and β-actin 0 and 24hr share a same source image

• Western blot panels for PAN Proteins (FA) (also named as RAP–FA Crosslink) group in Figure 5A in R21 AI159361–01, Figure 4D in *RNA* 2021, Figure [B] on slide 2 in *RNA* Mini 2021, Figure 4D in NCI Poster 2021, Figure d on slide 10 in KSHV Virtual 2021, Figure d on slide 10 in RNA World 2021, and Figure 4D in IHW Virtual 2021, specifically:

—bands for 8–72hr time points in SND1 and FTO panels share a same source image
—0–24hr panel areas for HNRNPC and YTHDF2 share a same source image
—blank panel for METTL3 and β-actin panels share a same source image

• original Western blot images provided in B_response.pptx to support the Western blot panels presented in Figure 4D in *RNA* 2021, Figure 5A in R21 AI159361–01, Figure [B] on slide 2 in RNA Mini 2021, Figure 4D in NCI Poster 2021, Figure d on slide 10 in KSHV Virtual 2021, Figure d on slide 10 in RNA World 2021, and Figure 4D in IHW Virtual 2021, specifically:

—RMB15 Western blot images for bio reps 1 and 2 share a same source image, with areas pasted over to make the two images appear different from each other. RBM15 bands for Total Lysate and RAP–FA Crosslink sample groups have been pasted over the base image on both the gels. The Total Lysate group bands between the two gel images share a same source image.
—The two METTL3 Western blot images share a same source image, with areas pasted over to make the two images appear different from one another. METTL3 bands for the Total Lysate and empty areas corresponding to RAP–FA crosslink sample groups have been pasted over the base image. The Total Lysate group bands in two Western blot images share a same source image, although vertical positioning of T2 and T3 with respect to T0 and T1 is changed to make the panels appear different from one another. T0 and T1 bands share same source image with T2 and T3 bands, respectively, on the two Western blot images.
—SND1 Western blot images for bio reps 1 and 2 share a same source image, with areas pasted over to make the two images appear different from one another. RAP–FA Crosslink T1–T4 bands share a same source image between the two gels. Bands are shifted vertically to give the impression that the two gels are different from each other. The Total Lysate T0–T3 main darker bands share a same source image between the two Western blot images. The bands are merged with background and additional band patterns to make the two images appear different from one another.
—HNRNPC Western blot images for bio reps 1 and 2 share a same source image, with areas pasted over to make the two images appear different from one another. The Total Lysate bands on the two images share the same source image. Further, Total Lysate T0 and T1 bands share same source image with T2 and T3 bands, respectively. The HNPNRC bio rep 2 Western blot share a same source image with RMB15 bio rep 2 Western blot. In the HNPNRC bio rep 2 image, the 26 kDa bands have been pasted over to make the gel image appear different from the RMB15 bio rep 2 image. Further, the same ladder image has been modified to appear different between the two gels.
—YTHDF2 Western blot images for all the three replicate gels share the same background image, with areas pasted over to make the three images appear different from one another. The Total

Lysate group bands on the Western blot 1 and 3 share a same source image. The Total Lysate bands on Western blot 2 share a same source image with METTL3 Total Lysate bio rep 1 (~53kDa) bands, HNRNPC Total Lysate bio rep 2 (26kDa) bands, and SND1 bio rep 2 RAP–FA crosslink (between 125 and 82 kDa) bands.

—FTO Western blot images for all the three replicate gels share the same background image, with areas pasted over to make the three images appear different from one another. On the FTO bio rep 3 Western blot image, RFA–FA Crosslink T3–T4 bands, Total Lysate T0–T1 bands, and Total Lysate T2–T3 band, respectively, are identical.

—β-actin Western blot image for the two replicate gels share the same source image, with areas pasted over to make the blot images appear different from one another. On the second replicate blot image, the Total Lysate T0–T1 bands are identical to Total Lysate T2–T3 bands, respectively. The Total Lysate T0–T3 bands on β-Actin Western blot replicate 2 image are identical to FTO Western blot replicate 3 Total Lysate T0–T3 bands, respectively.

—all the original unedited Western blot images for RMB15, METTL3, SND1, HNRNPC, YTHDF2, FTO and β-actin share the same source background image that have been modified to appear different from one another

• Native PAGE data by relabeling and reusing several identical bands to represent m^6A modifications at different nt positions on the PAN RNA samples in Figure 5E in *RNA* 2021, Figure [D] in RNA Mini 2021, Figure 5B in NCI Poster 2021, slide 12 in KSHV Virtual 2021, slide 6 in Virology Virtual 2021, slide 12 in RNA World 2021, and Figure 5B in IHW Virtual 2021, specifically:

—band in lane 1 corresponding to 0 hpi −4Sed sample of RBM15 KD 18nt panel, after flipping horizontally, share a same source image with band in lane 1 of METTL3 KD 1041nt, RBM15KD 1041nt and FTO KD 18nt samples

—bands for 0 hpi −4Sed, 48 hpi −4Sed, 0 hpi +4Sed and 48 hpi +4Sed samples in RBM15 KD 1041nt, METTL3 KD 1041nt and FTO KD 18nt blots are identical

—RBM15 KD 18nt 0 hpi +4Sed and 48 hpi +4Sed bands are identical to METTL3 KD 1048nt 0 hpi −4Sed and 48 hpi −4Sed bands, respectively, and to horizontally flipped FTO KD 203nt 48 hpi −4Sed and 0 hpi +4Sed bands, respectively

—FTO KD 1041nt 0 hpi −4Sed and 48 hpi −4Sed bands share a same source image with RBM15 KD 203nt 0 hpi −4Sed and 48 hpi −4Sed bands, respectively

—RBM15 KD 1048nt 0 hpi −4Sed and 48 hpi −4Sed bands are identical to RMB15 0 hpi +4Sed and 48 hpi +4Sed bands, respectively, and to the copy pasted bands on the lanes 10–11 (from the left) and 5–6 (from the left) of gel images on slides 11 and 12 of the intermediate.pptx

• confocal micrographs by using identical images either with or without modifications to present PAN RNA colocalization experiments in Figure 7 of *RNA* 2021, slide 11 of KSHV Virtual 2021, slide 6 of Virology Virtual 2021, and slide 11 of RNA World 2021, specifically:

—Replicate 2 and Enlarged-2 of RBM15 at 72 hpi are identical to Replicate 2 and Enlarged-2 of METTL3 72 hpi, respectively

—Replicate 1 of RBM15 48 hpi is rotated 90 degrees clockwise to present Replicate 2 of RBM15 24 hpi

—RBM15 24 hpi Enlarged 2 image is a further zoomed area of RBM15 48 hpi Enlarged 1 image

• confocal micrographs by using identical images to present PAN RNA colocalization experiments under different experimental conditions in Supplementary Figures 10a–b of *RNA* 2021, specifically:

—T3 panel representing staining for RBM15, DAPI, PAN and Combined samples in Supplementary Figure 10a is identical to T2 panel representing staining for METTL3, DAPI, PAN, and Combined samples, respectively. The same images also appear in 48 hpi panel in Figure 7A of *RNA* 2021, slide 11 of KSHV Virtual 2021, slide 6 of Virology Virtual 2021, and slide 11 of RNA World 2021, representing staining for RBM15, DAPI, PAN and Combined samples, respectively

—T4 replicate 2 (Rep 2) in RMB15 staining composite in Supplementary Figure 10a is identical to T4 replicate 2 (Rep 2) in METTL3 staining composite in Supplementary Figure 10b. The same image appeared as RMB15 T4(2) image in Figure 9B of R21 AI159361–01

• images of Native PAGE gel images in intermediate.pptx by adding transparency adjusted images of individual bands, empty areas, and/or ladders, to make the gel images appear different from the baseline images. Additionally:

—baseline gel image on slide 6 of intermediate.pptx was used to falsify and/or fabricate original gel-2 image for 2698nt sample on slides 9–10 of A-response.pptx

—baseline gel image on slide 7 of intermediate.pptx was used to falsify and/or fabricate one of the two original gel images on slide 7 of A-response.pptx

—part of falsified and/or fabricated bands on slide 12 of intermediate.pptx were incorporated in RBM15 KD original bottom gel image on slide 15 of B-response.pptx

• original gel images and Western blot images in A_response.pptx, B_response.pptx and Response_B_clarified.pptx provided to the *RNA* journal, specifically:

—the right-side gel image for SLAP analysis at nt position 2698 on slide 9 of A-response.pptx is a fabricated and/or falsified gel image that shares an identical baseline image with the gel image on slide 1 of intermediate.pptx

—bands in lanes 6–8 of the bottom METTL3 KD gel image on slide 14 of B_response.pptx and bands in lanes 9–7 of the bottom RBM15 KD gel image on slide 15 of B_response.pptx are, respectively, identical

—bands in lanes 9–11 of the bottom METTL3 KD gel image on slide 14 of B_response.pptx and bands in lanes 5–3 of the bottom RBM15 KD gel image on slide 15 of B_response.pptx are, respectively, identical

—bands in lanes 7–9 of the left-side FTO KD gel image on slide 13 of B_response.pptx and bands in lanes 9–7 of the bottom RBM15 KD gel image on slide 15 of B_response.pptx are, respectively, identical

—bands in lanes 10–13 of the left-side FTO KD gel image on slide 13 of B_response.pptx and bands in lanes 5–2 of the bottom RBM15 KD original gel image on slide 15 of B_response.pptx are, respectively, identical

—overall, one replicate gel for each of the three experimental groups (FTO KD, RBM15 KD, and METTL3 KD) provided as original unaltered image in support of Figure 5E of *RNA* 2021 share two panels containing a total of 7 bands from a same source image.

Respondent entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will exclude herself voluntarily for a period of three (3) years, beginning on November 3, 2023 (the ''Exclusion Period''), from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement or procurement transactions referred to as ''covered transactions'' in 2 CFR parts 180 and 376 (collectively the ''Debarment

Regulations''). At the conclusion of the Exclusion Period, Respondent agrees to have her research supervised for a period of two (2) years (the ''Supervision Period''). During the Supervision Period, prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) During the Exclusion Period, Respondent will not apply for, permit her name to be used on an application for, receive, or be supported by funds of the United States Government and its agencies made available through contracts, subcontracts, or covered transactions.

(3) During the Supervision Period, the requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution including Respondent's supervisor or collaborators will provide oversight and guidance. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract are supported by the research record.

(4) During the Supervision Period, Respondent will ensure that any institution employing her submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported and not plagiarized in the application, report, manuscript, or abstract.

(5) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that her participation was not proposed on a research project for which an application for PHS support was submitted and that she has not participated in any capacity in PHS-supported research.

(6) During the Exclusion and Supervision Periods, Respondent will exclude herself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: November 15, 2023.

Sheila Garrity,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2023–25603 Filed 11–17–23; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: NCI Clinical and Translational Cancer Research.

Date: February 21–22, 2024.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850, (Virtual Meeting).

Contact Person: Prashant Sharma, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Rockville, Maryland 20850, 240–275–6351, *prashant.sharma@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 15, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–25619 Filed 11–17–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0830]

National Merchant Mariner Medical Advisory Committee; December 2023 Virtual Meeting

AGENCY: United States Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee virtual meeting.

SUMMARY: The National Merchant Mariner Medical Advisory Committee (Committee) will conduct a virtual meeting to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards, and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The virtual meeting will be open to the public.

DATES: *Meeting:* The Committee will meet virtually on Tuesday, December 19, 2023, from noon until 3:00 p.m. Eastern Standard Time, (EST). The virtual meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than December 12, 2023.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on December 12, 2023, to obtain the needed information.

The Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Ms. Pamela Moore *pamela.j.moore@uscg.mil* or call 202–372–1361 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the virtual meeting as time permits, but if you want the Committee members to review your comment before the virtual meeting, please submit your comments no later than December 12, 2023. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0830 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. If your material cannot be submitted using *https://www.regulations.gov,* email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2023–0830. Comments received will be posted without alteration at *https://www.regulations.gov.* including any personal information provided. You may wish to review the Privacy and Security Notice, found via link on the homepage *https://www.regulations.gov.* For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Moore, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee, telephone 202–372–1361 or email *pamela.j.moore@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C., ch. 10). The Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15104. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C 15109. The Committee advises the Secretary of Homeland Security through the Commandant of the United States Coast Guard on matters relating to: (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

AGENDA: The National Merchant Mariner Medical Advisory Committee will meet on Tuesday, December 19, 2023.

The agenda for the December 19, 2023, meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer Remarks.

(3) Roll call of Committee members.

(4) Adoption of the Agenda.

(5) Acceptance of Minutes from Committee Meeting 5.

(6) U.S. Coast Guard Presentations:

(a) 2023 Report on Recommendations to the U.S. Coast Guard from the National Merchant Mariner Medical Advisory Committee;

(b) Presentation of New Merchant Mariner Credential.

(7) Public comment period.

(8) Closing remarks.

(9) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-mariner-medical-advisory-committee-(nmedmac)* no later than December 12, 2023. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

During the December 19, 2023 meeting, a public comment period will be held immediately after the U.S. Coast Guard Presentations, at approximately 2:30 p.m. EST. Public comments will be limited to 3 minutes per speaker and limited to one comment per person. Please note that the public comment period will end following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: November 15, 2023.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2023–25618 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2387]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 20, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2387, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Coconino County, Arizona and Incorporated Areas Project: 19–09—0024S Preliminary Date: July 20, 2023	
Unincorporated Areas of Coconino County	Coconino County Community Development Department, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.
La Paz County, Arizona and Incorporated Areas Project: 20–09—0044S Preliminary Date: July 31, 2023	
Unincorporated Areas of La Paz County	La Paz County Community Development, 1112 Joshua Avenue, #202, Parker, AZ 85344.

[FR Doc. 2023–25583 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of April 11, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://*

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Ketchikan Gateway Borough and the Cities of Ketchikan and Saxman, Alaska Docket No.: FEMA—B–2276	
Ketchikan Gateway Borough	Ketchikan Gateway Borough Planning and Community Development Office, 1900 1st Avenue, Suite 126, Ketchikan, AK 99901.
Ventura County, California and Incorporated Areas Docket Nos.: FEMA–B–2104 and FEMA–B–2296	
City of Fillmore	City Hall, 250 Central Avenue, Fillmore, CA 93015.
City of Santa Paula	City Hall, 970 Ventura Street, Santa Paula, CA 93060.
Unincorporated Areas of Ventura County	Ventura County Government Center Hall of Administration, 800 South Victoria Avenue, Ventura, CA 93009.
Arapahoe County, Colorado and Incorporated Areas Docket No.: FEMA–B–2039 and FEMA–B–2287	
City of Centennial	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.
City of Englewood	Civic Center, 1000 Englewood Parkway, Englewood, CO 80110.
City of Greenwood Village	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.
City of Littleton	Public Works Department, 2255 West Berry Avenue, Littleton, CO 80120.
City of Sheridan	Municipal Center, 4101 South Federal Boulevard, Sheridan, CO 80110.
Unincorporated Areas of Arapahoe County	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.
Gwinnett County, Georgia and Incorporated Areas Docket No.: FEMA–B–2154 and B–2298	
City of Dacula	City Hall, 442 Harbins Road, Dacula, GA, 30019.
Town of Braselton	Town Hall, 4982 Highway 53, Braselton, GA 30517.
Unincorporated Areas of Gwinnett County	Gwinnett County Justice and Administration Center, 75 Langley Drive, Lawrenceville, GA 30046.
Scott County, Iowa and Incorporated Areas Docket No.: FEMA–B–2285	
City of Bettendorf	City Hall, 1609 State Street, Bettendorf, IA 52722.
City of Buffalo	City Hall, 329 Dodge Street, Buffalo, IA 52728.
City of Davenport	City Hall, 226 West 4th Street, Davenport, IA 52801.
City of Panorama Park	City Hall, 120 Short Street, Panorama Park, IA 52722.
City of Riverdale	City Hall, 110 Manor Drive, Riverdale, IA 52722.
Unincorporated Areas of Scott County	Scott County Administrative Center, 600 West 4th Street, Davenport, IA 52801.
Kenosha County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2269	
City of Kenosha	City Hall, 625 52nd Street, Kenosha WI 53140.
Unincorporated Areas of Kenosha County	Kenosha County Center, 19600 75th Street, Suite 185–3, Bristol, WI 53104.
Village of Bristol	Bristol Municipal Building, 19801 83rd Street, Bristol, WI 53104.

Community	Community map repository address
Village of Paddock Lake	Village Hall, 6969 236th Avenue, Paddock Lake, WI 53168.
Village of Pleasant Prairie	Village Hall, 9915 39th Avenue, Pleasant Prairie, WI 53158.
Village of Salem Lakes	Salem Lakes Village Hall, 9814 Antioch Road, Salem, WI 53168.
Village of Somers	Somers Village Hall, 7511 12th Street, Kenosha, WI 53144.
Village of Twin Lakes	Village Hall, 105 East Main Street, Twin Lakes, WI 53181.

[FR Doc. 2023–25584 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0022; OMB No. 1660–0149]

Agency Information Collection Activities: Proposed Collection, Comment Request; Requests for Special Priorities Assistance

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-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 an extension, without change, of a currently approved information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's Requests for Special Priorities Assistance, FEMA Form FF–112–FY–23–100 (formerly 009–0–142).

DATES: Comments must be submitted on or before December 20, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Marc Geier, FEMA's Office of Policy and Program Analysis, 500 C Street SW, Washington, DC 20472, at (202) 924–0196, or *FEMA-DPA@fema.dhs.gov.* 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: This information is necessary to support the President's priorities and allocations authority under title I of the Defense Production Act of 1950 (DPA), 50 U.S.C. 4501, *et seq,* (as amended) as implemented by the Emergency Management Priorities and Allocations System (EMPAS) regulation (44 CFR part 333) which was added by FEMA's *Emergency Management Priorities and Allocations System Interim Final Rule* (RIN 1660–AB04) dated May 13, 2020. The purpose of this authority is to ensure the timely delivery of products, materials, and services to meet current national defense requirements. The definition of ''national defense'' in section 702(14) of the DPA provides that this term includes ''homeland security,'' ''emergency preparedness activities'' conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5195 *et seq.*), and ''critical infrastructure protection and restoration.''

This proposed information collection previously published in the **Federal Register** on September 1, 2023, at 88 FR 60479 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Requests for Special Priorities Assistance.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0149.

FEMA Forms: FEMA Form FF–112–FY–23–100 (009–0–142), Requests for Special Priorities Assistance.

Abstract: Contractors may request Special Priorities Assistance (SPA) when placing rated orders with suppliers, to obtain timely delivery of products, materials or services from suppliers, or for any other reason under the EMPAS, in support of approved national programs. Additionally, when responding to an emergency event like COVID–19, State and local governments, owners, operators, and the private sector may request SPA. These contractors use FEMA Form FF–112–FY–23–100 (formerly 009–0–142) to apply for such assistance.

Affected Public: Private Sector, For-Profit.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Total Annual Burden Hours: 6.

Estimated Total Annual Respondent Cost: $352.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $56,440.

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; (b) 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. 2023–25587 Filed 11–17–23; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2389]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 20, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2389, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Hamilton County, Florida and Incorporated Areas Project: 15–04–1389S Preliminary Date: August 27, 2021	
Town of Jennings	Town Hall, 1291 Florida Street, Jennings, FL 32053.
Unincorporated Areas of Hamilton County	Hamilton County Building Department, 204 Northeast First Street, Jasper, FL 32052.
Jefferson County, Florida and Incorporated Areas Project: 19–04–0012S Preliminary Date: March 29, 2023	
Unincorporated Areas of Jefferson County	Jefferson County Courthouse, 1 Courthouse Circle, Monticello, FL 32344.

Community	Community map repository address
Madison County, Florida and Incorporated Areas Project: 19–04–0012S Preliminary Date: March 29, 2023	
City of Madison	City Hall, 321 Southwest Rutledge Street, Madison, FL 32340.
Town of Greenville	City Hall, 154 Southwest Old Mission Avenue, Greenville, FL 32331.
Unincorporated Areas of Madison County	Madison Courthouse Annex, 229 Southwest Pinckney Street, Madison, FL 32340.
Franklin County, North Carolina and Incorporated Areas Project: 22–04–0016S Preliminary Date: June 15, 2022	
Unincorporated Areas of Franklin County	Franklin County Planning and Inspections, 127 South Bickett Boulevard, Louisburg, NC 27549.
Halifax County, North Carolina and Incorporated Areas Project: 22–04–0017S Preliminary Date: June 15, 2022	
City of Roanoke Rapids	Planning and Development Department, 1040 Roanoke Avenue, First Floor, Roanoke Rapids, NC 27870.
Town of Enfield	Town Hall, 121 Southeast Railroad Street, Enfield, NC 27823.
Town of Halifax	Town Hall, 24 South King Street, Halifax, NC 27839.
Town of Scotland Neck	Town Hall, 1310 Main Street, Scotland Neck, NC 27874.
Town of Weldon	Town Hall, 109 Washington Avenue, Weldon, NC 27890.
Unincorporated Areas of Halifax County	Halifax County Planning and Zoning Department, 15 West Pittsylvania Street, Halifax, NC 27839.
Nash County, North Carolina and Incorporated Areas Project: 22–04–0016S Preliminary Date: June 15, 2022	
Unincorporated Areas of Nash County	Nash County Planning Department, 120 West Washington Street, Suite 2110, Nashville, NC 27856.
Warren County, North Carolina and Incorporated Areas Project: 22–04–0016S Preliminary Date: June 15, 2022	
Town of Warrenton	Town Hall, 113 South Bragg Street, Warrenton, NC 27589.
Unincorporated Areas of Warren County	Warren County Planning Department, 542 West Ridgeway Street, Warrenton, NC 27589.

[FR Doc. 2023–25585 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Aviation Security Advisory Committee; Public Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a public meeting of the Aviation Security Advisory Committee (ASAC) on December 6, 2023. Members of the ASAC will meet in person at the TSA Headquarters. Members of the public will be able to participate virtually via WebEx. The meeting agenda and information on public participation is provided below under the **SUPPLEMENTARY INFORMATION** section.

DATES: The meeting will take place on Thursday, December 6, 2023. The meeting will begin at 10:00 a.m. and adjourn at 1:00 p.m., Eastern Standard Time. As listed in the Public Participation section below, requests to attend the meeting, to address the ASAC, and/or for accommodations because of a disability, must be received by November 24, 2023.

ADDRESSES: The in-person meeting for ASAC members will be held at the TSA Headquarters, located at 6595 Springfield Center Drive, Springfield, Virginia 20598. See Public Participation section below for information on how to register to attend the meeting. Attendance information will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Tamika McCree Elhilali, Aviation Security Advisory Committee, Designated Federal Officer, U.S. Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, (TSA–28), Springfield, Virginia 20598, *ASAC@tsa.dhs.gov,* 571–227–2632.

SUPPLEMENTARY INFORMATION:

Background

TSA is providing notice of this meeting in accordance with the Aviation Security Stakeholder Participation Act of 2014, Public Law 113–238 (128 Stat. 2842; Dec. 18, 2014), as codified at 49 U.S.C. 44946. The ASAC provides advice and industry perspective to the Administrator of TSA on aviation security matters, including the development, refinement, and implementation of policies, programs, rulemaking, and security directives pertaining to aviation security. While the ASAC is exempt from the Federal Advisory Committee Act (5 U.S.C. App.), *see* 49 U.S.C. 44946(f), paragraph 44946(c)(4)(B) requires that TSA hold at least one public meeting each year.

Meeting Agenda

The Committee will meet to discuss items listed in the agenda below:

- Legislative Update
- TSA Budget Update
- Subcommittee and Work Group briefings on calendar year (CY) 2023 activities, key issues, and areas of focus for CY 2024:
  - Air Cargo

- Airlines
- Airports
- General Aviation
- Insider Threat
- International Aviation
- Security Technology
- Public Comments
- Closing Comments and Adjournment

Public Participation

The meeting will be open to the public via WebEx. Members of the public who wish to participate are required to register via email by submitting their name, contact number, and affiliation (if applicable) to *ASAC@tsa.dhs.gov* by November 24, 2023. Attendees will be admitted on a first-to-register basis and attendance may be limited due to WebEx meeting constraints. Attendance information will be provided upon registration.

Members of the public wishing to present oral or written statements must make advance arrangements by November 24, 2023. The statements must specifically address issues pertaining to the items listed in the Meeting Agenda above. Advance requests to present and/or written statements must be submitted via email to *ASAC@tsa.dhs.gov.* The public comment period will begin at approximately 12:00 p.m. and will end at 1:00 p.m. Oral presenters are requested to limit their comments to 3 minutes.

The ASAC and TSA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by November 24, 2023.

Dated: November 15, 2023.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2023–25624 Filed 11–17–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–25]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a rescindment of a systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the Department of the Housing and Urban Development (HUD), the Office of Policy Development and Research, is issuing a public notice of its intent to rescind the Counseling Options Data System (CODS) because the demonstration and evaluation contract of the data system has ended.

DATES: Comments will be accepted on or before December 20, 2023. This proposed action will be effective immediately upon publication.

ADDRESSES: You may submit comments, identified by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White, Chief Privacy Officer, 451 Seventh Street SW, Room 10139; Washington, DC 20410; telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: The Counseling Options Data System (CODS) is being terminated because the demonstration and data evaluation contract that the data system was supporting have ended. CODS was a contractor-owned and contract-operated system. The system was originally called the Random Assignment and Service Tracking (RAST) system, but the name changed to the Counseling Options Data System (CODS) during the process of obtaining an authorization to operate (ATO) at the FISMA moderate level. Abt Associates, the contractor, destroyed all record files in accordance with National Institute of Standards and Technology (NIST) Special Publications 800–88. Abt Associates transferred de-identified baseline, interim and long term follow up survey data and Federal Housing Administration (FHA) data on study participants that purchased homes with FHA loans to HUD on 9/27/2023. The de-identified data resides on PD&R's secure server and only contains the study participant's study ID, which has no personally identifiable information (PII).

SYSTEM NAME AND NUMBER:

Counseling Options Data system (CODS).

HISTORY:

Random Assignment and Service Tracking (RAST): 78 FR 2418 (January 11, 2013).

Ladonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–25511 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–15]

60-Day Notice of Proposed Information Collection: Evaluation of Green and Resilient Retrofit Program; OMB Control No.: 2528–NEW

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 19, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting, ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, Reports Management

Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email; *Anna.P.Guido@hud.gov;* telephone (202) 402–5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Green and Resilient Retrofit Program.

OMB Approval Number: 2528–NEW.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information to support an evaluation of the Green and Resilient Retrofit Program (GRRP). GRRP is a newly funded program through Section 30002 of the Inflation Reduction Act of 2022 (H.R. 5376) titled ''Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing.'' HUD is offering GRRP funding in the form of grants or loans through three award cohorts designed to meet the needs of properties in different situations, implemented through three parallel Notices of Funding Opportunities (NOFOs). These award cohorts are the Elements Award cohort, the Leading Edge Award cohort, and the Comprehensive Award cohort. Under all three award cohorts, owners of eligible HUD-assisted multifamily properties will receive funding in the form of grants or loans to undertake retrofits, enhancements, and upgrades to improve energy and water efficiency, indoor air quality, and climate hazard resilience; to reduce emissions; to use renewable energy; and/or to use low Embodied Carbon materials.

The ''Elements'' NOFO provides modest funding to owners to add proven and meaningful climate resilience, energy efficiency, electrification, and renewable energy measures to the construction scopes of in-progress recapitalization transactions. The ''Leading Edge'' NOFO provides funding for retrofit activities to achieve ambitious outcomes, including net zero, renewable energy generation, use of building materials with lower Embodied Carbon, and climate resilience investments. The ''Comprehensive'' NOFO will provide funding to initiate recapitalization investments designed from inception around both proven and innovative measures, including ambitious green building standards or measures, renewable energy generation, use of building materials with lower Embodied Carbon, and climate resilience investments.

The Evaluation of Green and Resilient Retrofit Program (GRRP Evaluation) will be implemented in phases. Under Phase 1, HUD plans to collect survey and interview data related to the application process, the scoping and design phase of GRRP, and the post-construction period.

(1) *GRRP Application Survey:* The application survey and interview will provide data necessary to assess the success of the application process, which is influenced by property owners' perceptions of the design of the application and the program.

(2) *GRRP Scoping and Design Survey:* The survey and interview related to the scoping and design phase of GRRP will provide data necessary to evaluate the process of implementing the program, including what went well and what barriers were encountered. It will cover issues related to activities such as developing the transaction plan and closing package, and designing the retrofit.

(3) *GRRP Post-Construction Survey:* The post-construction survey and interview will provide data necessary to evaluate how well the program worked in terms of the perceived costs and benefits to property owners, including questions related to construction, such as whether property owners encountered barriers with construction.

This **Federal Register** Notice provides an opportunity to comment on the information collection for the Evaluation of the Green and Resilient Retrofit Program (GRRP Evaluation).

Respondents: Owners of HUD-assisted multifamily properties eligible for GRRP. Awardees and non-awardee applicants will be sampled using a stratified design with stratification on cohort, region, and the size of the owner (*e.g.,* small owners of properties vs. large corporate property owners). Eligible non-applicants will be chosen using a stratified design with stratification on region and size of the owner from Office of Recapitalization's database of eligible properties minus applicants. Interviews will be conducted with a subset of property owners; this sample will be chosen based on a combination of stratified sampling (using the same approach as sampling the awardees for the survey; approximately 38% of interview sample) and purposive sampling (approximately 62% of interview sample) stemming from inclusion in case studies and/or survey responses benefitting from in-depth follow-up. We will provide accommodations to the greatest extent possible. Property owners with hearing impairments can be accommodated through a web-based version of the data collection, and visually impaired property owners can be accommodated through a telephone-based version of the data collection. We will use translation services as needed, but we do not expect language barriers to be a significant concern because property owners are already required to submit their information to HUD in English.

Estimated Number of Respondents: This information collection will affect a maximum of 900 respondents, including approximately 450 grantees, 225 applicant owners who did not receive grants or loans (Application Survey only), and 225 eligible non-applicants (Application Survey only). Interviews will be collected from approximately 40 grantees across all three cohorts.

Estimated Time per Responses: The expected time per response varies by instrument. Reading the Outreach Materials is estimated to take a maximum of 0.1 hours. For the Application Survey, expected time per response is a maximum of 0.5 hours. Expected time per response for the Scoping and Design and Post-Construction surveys is a maximum of 0.75 hours each. Expected time per interview is a maximum of 1 hour.

Frequency of Response:

- 1 time for non-applicants and applicant non-awardees (only surveyed in the Application Survey);
- 3–6 times for awardees (surveyed in the Application Survey, Scoping and Design Survey, and Post-Construction Survey; subset also interviewed in depth regarding Application, Scoping and Design, and Post-Construction).

Average Hours per Response: 0.5 hours/application survey, 0.75 hours/scoping and design survey, 0.75 hours/post-construction survey, and 1 hour/interview.

Estimated Total Annual Cost: The total estimated cost for the proposed data collection is $108,082.

The Table below provides the estimated burden hours for the planned surveys and interviews. These estimates assume the maximum targeted number of study participants and are calculated as the time needed to complete individual surveys and interviews. To estimate the hourly cost per respondent, HUD used the average hourly compensation (wages and benefits) of private workers who are in management, business, and financial occupations, according to the U.S. Bureau of Labor Statistics' Employer Costs for Employee Compensation Survey from June 2023 (*https://www.bls.gov/news.release/pdf/ecec.pdf*).

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Outreach Materials to Sample	900	1	1	0.1	90	$80.96	$7,286
GRRP Application Survey	900	1	1	0.5	450	80.96	36,432
GRRP Scoping and Design Survey	450	1	1	0.75	337.5	80.96	27,324
GRRP Post-Construction Survey	450	1	1	0.75	337.5	80.96	27,324
GRRP Application Interview	40	1	1	1.0	40	80.96	3,238
GRRP Scoping and Design Interview	40	1	1	1.0	40	80.96	3,238
GRRP Post-Construction Interview	40	1	1	1.0	40	80.96	3,238
Total					1335		108,082

Respondent's Obligation: Participation is voluntary.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected, and

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

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–25509 Filed 11–17–23; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings; Correction

AGENCY: Inter-American Foundation.

ACTION: Notice, correction.

SUMMARY: The Inter-American Foundation is announcing a correction to the notice of meeting of the Advisory Council. This meeting was announced in the **Federal Register** of November 14, 2023. The meeting notice was published under the incorrect meeting authority.

FOR FURTHER INFORMATION CONTACT: Nicole Stinson, Associate General Counsel, (202) 683–7117 or *nstinson@iaf.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 14, 2023, in FR Doc. 2023–25176 (88 FR 78059), on page 78059, third column, correct the Title ''Sunshine Act Meetings'' and text ''The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552b'' to read:

Federal Advisory Committee Act Meetings

The Inter-American Foundation is holding this meeting under the Federal Advisory Committee Act, 5 U.S.C. app. 1 Public Law 92–463.

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–25638 Filed 11–16–23; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2023–N091; FXMB123109WEBB0–234–FF09M26000; OMB Control Number 1018–0019]

Agency Information Collection Activities; Submission to the Office of Management and Budget; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; comment period reopening.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before December 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0019'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service

Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On February 28, 2023, we published in the **Federal Register** (88 FR 12695) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on May 1, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–MB–2023–0003) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods).

On August 9, 2023, we published in the **Federal Register** (88 FR 53902) a notice reopening the comment period to provide the public with an opportunity to comment on the proposed revisions to this information collection that we planned to submit to OMB for approval. In that second notice, we solicited comments for 60 days, ending on October 10, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–MB–2023–0003) to provide the public with an additional method to submit comments (in addition to the typical U.S. mail submission method). We received one comment in response to that second notice, but it did not address the information collection requirements. Therefore, no response is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–712) designates the Department of the Interior as the primary agency responsible for managing migratory bird populations frequenting the United States and setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. Federal, State, Provincial, Tribal, and local conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the American woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the species. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the woodcock population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting.

State, local, Tribal, Provincial, and Federal conservation agencies, as well as other participants, use Form 3–156 to conduct annual field surveys. Instructions for completing the survey and reporting data are on the reverse of the form. Observers can scan/email, scan/upload via link, mail, or fax Form 3–156 to the Division of Migratory Bird Management, or enter the information electronically through the internet at *https://migbirdapps.fws.gov/woodcock.*

We collect observer information (name, telephone, email address, and mailing address) so that we can contact the observer if questions or concerns arise. Observers provide information on:

- Sky condition, temperature, wind, and precipitation.
- Stop number.
- Odometer reading.
- Time at each stop.
- Number of American Woodcock males heard peenting (calling).
- Disturbance level.
- Comments concerning the survey.

We use the information that we collect to analyze the survey data and prepare reports. Assessment of the population's status serves to guide the Service, the States, and the Canadian Government in the annual promulgation of hunting regulations.

Proposed Revisions

We will request OMB approval to revise our American Woodcock Singing-ground Survey data collection and data entry process over the 2023–2024 period. We plan to develop and implement a new mobile application, along with a new web browser data entry method. The yet-to-be-developed application will operate on portable electronic devices while conducting field surveys. The data entry feature would still be collecting data on all the same fields within the survey form.

While we still plan to administer the paper-based survey form to every observer, the observer is not required to submit the paper-based results unless the observer does not utilize the data collection mobile application in the field. Instead, data entry will occur through the application's web browser after the survey is complete. A mapping feature within the new application will allow observers to see each stop location along the route and keep track of their current location. This will assist in stop location verification efforts and help maintain a verified spatial reference for the survey.

Initially, we expect the burden time to be higher as respondents adjust to the new method to collect and enter data, and for reviewing the updated instructions and completing the training. However, once observers are trained in using the application, the estimated burden will decrease in subsequent years. With this submission, we will also clearly differentiate the burden from U.S. based submissions with those from Canada.

Title of Collection: North American Woodcock Singing Ground Survey.

OMB Control Number: 1018–0019.

Form Number: Form 3–156.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Provincial, local, and Tribal Governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

TABLE 1—BURDEN ESTIMATES: FIRST YEAR

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Survey—US (App Submission) REVISED:					
Government	290	1	290	3.72	1,079
Survey—CAN (App Submission) NEW:					
Foreign Gov	100	1	100	3.72	372
Survey—US (In the Field App Collection and Submission) NEW:					
Government	291	1	291	3.58	1,042
Survey—CAN (In the Field App Collection and Submission) NEW:					
Foreign Gov	101	1	101	3.58	362
Survey—US:					
Government	2	1	2	1.92	4
Survey—CAN NEW:					
Foreign Gov	36	1	36	1.92	69
Totals:	820		820		2,928

* Rounded.

TABLE 2—BURDEN ESTIMATES: SUBSEQUENT YEARS

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Survey—US (App Submission) REVISED:					
Government	290	1	290	2.05	595
Survey—CAN (App Submission) NEW:					
Foreign Gov	100	1	100	2.05	205
Survey—US (In the Field App Collection and Submission) NEW:					
Government	291	1	291	1.92	559
Survey—CAN (In the Field App Collection and Submission) NEW:					
Foreign Gov	101	1	101	1.92	194
Survey—US:					
Government	2	1	2	1.92	4
Survey—CAN NEW:					
Foreign Gov	36	1	36	1.92	69
Totals:	820		820		1,626

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–25555 Filed 11–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2023–0211; FXMB1231099BPP0–245–FF09M32000; OMB Control Number 1018–0171]

Agency Information Collection Activities; Establishment of Annual Migratory Bird Hunting Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before January 19, 2024.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference ''1018–0171'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2023–0211.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 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.

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 that your entire comment—including your personal identifying information—may be 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: Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' (16 U.S.C. 704(a)) and are updated annually. This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of State, Tribal, and Federal governments. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, Provincial, and Tribal governments, as well as private conservation entities and the general public.

The information identified below, solicited annually from State (including U.S. territory) governments, is necessary to establish annual migratory bird hunting seasons. The required information, received at various times in the year prior to the actual hunting season as part of the rulemaking process described above, is used by the Service as part of the final rulemaking process necessary to open annual hunting seasons otherwise closed by law.

1. *Information Requested from States and U.S. Territories to Establish Annual Migratory Bird Hunting Seasons*—State and U.S. territory governments that wish to establish annual migratory game bird hunting seasons are required to provide the requested dates and other details for hunting seasons in their respective States or Territories. The information is provided to the Service

in a non-form format, usually via letter or spreadsheet, in response to solicitations for the information sent to the State governments each year via an emailed letter and as part of the first final rule (for the frameworks).

2. *Reports (50 CFR part 20)*—The following reports are requested from the States and are submitted either annually or every 3 years as explained in the following text. (*NOTE:* We annotated changes, if any, to the reporting requirements since OMB's last approval.)

a. Reports from Experimental Hunting Seasons and Season Structure Changes (Required):

i. *Atlantic Flyway Council:*

- Delaware—Experimental tundra swan season (Yearly updates and Final report) (Removed—Completed)
- Connecticut, Maryland, North Carolina, and Virginia—Evaluation of the two zone and three segment duck season zone-split configuration including impacts on hunter dynamics (*e.g.,* hunter numbers, satisfaction) and harvest during the 2021–25 seasons (Final report for each State). (New)

ii. *Mississippi Flyway Council:*

- Alabama—Experimental sandhill crane season (Yearly updates and Final report) (Removed—Completed)
- Minnesota—Experimental early teal season (Yearly updates and Final report)
- Louisiana—Evaluation of the two zone and three segment duck season zone-split configuration including impacts on hunter dynamics (*e.g.,* hunter numbers, satisfaction) and harvest during the 2021–25 seasons (Final report). (New)

iii. *Central Flyway Council:*

- New Mexico—Sandhill crane season in Estancia Valley (Yearly updates and Final report) Now operational—Annual data are still required, but there is not a final report, since this monitoring will occur in perpetuity (or as long as the State has that hunt area). (Removed—Experimental completed; Moved to State-specific below)
- South Dakota and Nebraska—Experimental two-tier hunting regulations study per the terms of the study plan and Memorandum of Agreement among these States and the Service (Yearly updates and Final report)
- Wyoming—Split (3-way) season for Canada geese (Final report only) (Removed—Completed)

iv. *Pacific Flyway Council:*

- California—Split (3-way) season for white-fronted geese (Final report only) (Removed—Completed)
- Idaho—Experimental swan season (Yearly updates and Final report) (Removed—Completed)

v. *Additional State-specific Annual Reports:*

- Arizona—Sandhill crane season harvest and subspecies composition (3-year intervals).
- New Mexico—Sandhill crane season harvest and subspecies composition in Estancia Valley (Yearly). (Revised—Relocated from Central Flyway Council experimental reports above)
- Delaware, North Carolina, and Virginia—Tundra swan season hunter participation and harvest (Yearly). (Revised—To add Delaware)
- Montana (Central Flyway portion), North Dakota, and South Dakota—Tundra swan season hunter participation and harvest (Yearly). (Revised—Relocated Montana and South Dakota to separate bullet below)
- Montana (Central Flyway portion) and South Dakota—Swan season hunter participation, harvest, species composition, and hunter compliance rates in providing species-determinant parts or bill measurements of harvested swans for species identification (Yearly). (Revised)
- Idaho, Montana (Pacific Flyway Portion), Utah, and Nevada—Swan season hunter participation, harvest, species composition, and hunter compliance rates in providing species-determinant parts or bill measurements of harvested swans for species identification (Yearly). (Revised—To add Idaho and Montana)

Reports and monitoring are used for a variety of reasons. Some are used to monitor species composition of the harvest for those areas where species intermingling can confound harvest management, and potential overharvest of one species can be of management concern. Others are used to determine overall harvest for those species and/or areas that are not sampled well by our overall harvest surveys due to either the limited nature/area of the hunt or season, or where the harvest requires close monitoring. Experimental season reports are used to determine whether the experimental season is achieving its intended goals and objectives, without causing unintended harm to other species and ultimately whether the experimental season should proceed to operational status. Most experimental seasons are 3-year trials with yearly reports and a final report. Most of the other reports and monitoring are conducted either annually or at 3-year intervals.

Proposed Revisions

1. *(REVISION)* Submissions of Tribal Proposals—Under the regulations in the Service's September 1, 2023, final rule (88 FR 60375), we have removed the requirement that Tribes annually submit their proposed migratory game bird hunting regulations (and associated monitoring, anticipated harvest, and capabilities for regulation development and enforcement) for our review and approval. We also will no longer publish special Tribal migratory game bird hunting regulations in the **Federal Register** (*i.e.,* a proposed and final rule). The regulations set forth in the September 1, 2023, final rule adopted elements of our guidelines in use since 1985 for establishing special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. Tribes that comply with these regulations will be authorized to independently establish special Tribal migratory bird hunting regulations. However, if circumstances change and data indicates migratory game bird populations are substantially declining or Tribal hunting increases significantly, we will reevaluate the regulations at 50 CFR 20.110.

By allowing Tribes to independently establish special migratory bird hunting regulations, the Service recognizes Tribal sovereignty to exercise reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members on their reservation. The September 1, 2023, final rule extended to Tribes with reserved hunting rights the same autonomy as the States to independently establish migratory game bird hunting seasons for nontribal members within annually established, biologically appropriate Federal outside limits. As an alternative to promulgating special Tribal migratory game bird hunting regulations, Tribes may choose to observe the hunting regulations established by the State or States in which the reservation is located. We coordinated with Tribes over the past 2 years via letters and four webinars as we developed this new regulatory approach for Tribal self- management of the harvest, and we have received positive feedback. The new system will reduce the annual administrative burden on both the Tribes and the Service to propose, review, and publish special migratory game bird hunting regulations

while continuing to sustain healthy migratory game bird populations for future generations.

2. *(NEW)* Requests for Consultation (Tribes/States)—The new regulations in the final rule under RIN 1018–BF64 (88 FR 60375, September 1, 2023) also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the reservations where Tribes have full wildlife-management authority over such hunting, or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands within the reservation. Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands.

The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory game bird hunting by non-Indians on these lands. In those cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes may wish to establish special migratory game bird hunting regulations for Tribal members on ceded lands.

It is incumbent upon the Tribe and/or the State to request consultation. We will not presume to make a determination, without being advised by either a Tribe or a State, that any issue is or is not worthy of formal consultation. Tribal and State requests for consultation with the Service should be sent to the Service's Assistant Director for the Migratory Bird Program. We note that our guidance on resolving issues of concern between Tribes and States on reservations and ceded lands is the same guidance we provided under the previous Tribal regulation process.

3. *(NEW)* Requests for Experimental Seasons (Tribes)—We will continue to consult with Tribes that wish to reach a mutual agreement (memorandum of understanding (MOU) or similar type of formal agreement) on conducting short-term (possibly several years) experimental hunting seasons using methods outside of the Federal hunting methods at 50 CFR 20.21 for on-reservation and ceded lands hunting by Tribal members. The Tribal-member-only experimental hunting season would provide data and evaluation criteria specified in an agreement for consideration if a Tribe would like to make the additional hunting method operational. Tribes should send such requests for consultation to the Service's Assistant Director for the Migratory Bird Program at least 9 months before the season or ceremony regarding hunting methods outside of the Federal regulations.

If any individual Tribe wishes to make these additional experimental hunting methods operational and the Service agrees, the Service will conduct rulemaking (using any data from the experimental hunting season) to amend 50 CFR part 20 to allow Tribal members to use these additional hunting methods.

Starting with the 2023–2024 hunting season, annual Tribal hunting season regulations will no longer be published in the **Federal Register**, alleviating the administrative burden to both the Service and the Tribes of developing special Tribal migratory bird hunting regulation proposals, reviewing proposals, and publishing Tribal regulations as Federal regulations. This process would not apply to seasons for subsistence take of migratory birds in Alaska.

Title of Collection: Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20.

OMB Control Number: 1018–0171.

Form Numbers: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 52 (from State governments and Territories).

Total Estimated Number of Annual Responses: 78 (from 52 State and U.S. Territories, as well as 26 additional reports).

Estimated Completion Time per Response: Varies from 4 hours to 650 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 11,423.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–25558 Filed 11–17–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[234D0102DM, DS61200000, DLSN00000.000000, DX61201]

Request for Public Nominations for Authors and Scientific/Technical Inputs for the First National Nature Assessment

AGENCY: Office of Policy Analysis, Interior.

ACTION: Request for public nominations.

SUMMARY: The U.S. Department of the Interior, on behalf of the U.S. Global Change Research Program (USGCRP), is soliciting nominations for authors and scientific/technical inputs for the First National Nature Assessment (NNA1). Refer to the NNA1 Draft Prospectus for further information on the scope, topics, and overarching themes for the report. NNA1 will adhere to the Global Change Research Act, Information Quality Act, and Evidence Act requirements for quality, transparency, and accessibility as appropriate for a Highly Influential Scientific Assessment. NNA1 will also adhere to USGCRP standards and guidelines requiring it to be a policy-neutral and policy-relevant product.

DATES: Nominations should be submitted via the web address specified below and must be received by the close of this notice January 4, 2024. While we request that scientific/technical inputs be submitted by the close of this notice, they will be accepted on an ongoing basis throughout the development of the report.

ADDRESSES: Nominations for authors must be submitted electronically using a web form accessible via *https://www.globalchange.gov/notices.* A short Curriculum Vitae (CV) of no more than four (4) pages must be included. Scientific/technical inputs should also be submitted electronically using a web form accessible via *https://www.globalchange.gov/notices.*

Instructions: Response to this notice is voluntary. Responses to this notice may be used by the U.S. Government for program planning on a non-attribution basis. The Department of the Interior therefore requests that no business

proprietary information or copyrighted information be submitted in response to this notice. Information relating to national defense or national security of the United States of America should not be submitted in response to the notice. Please note that the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Chris Avery, (202) 419–3474, *cavery@usgcrp.gov,* U.S. Global Change Research Program

SUPPLEMENTARY INFORMATION: The U.S. Global Change Research Program (USGCRP) was created by Congress in 1990 to ''assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.'' USGCRP comprises 14 Federal agencies that work together to carry out its legislative mandate. USGCRP is conducting the First National Nature Assessment (NNA1) to assess changes in nature as an aspect of global change. The scope of NNA1 is to assess the status, observed trends, and future projections of America's lands, waters, wildlife, biodiversity, and ecosystems and the benefits they provide, including connections to the economy, public health, equity, climate mitigation and adaptation, and national security.

NNA1 development will be transparent and inclusive, offering opportunities for public participation throughout the process. The development of NNA1 is overseen by a Federal Steering Committee (FSC) comprising representatives from each of USGCRP's member agencies. The production and review processes are designed to result in a report that is authoritative, timely, relevant, and policy neutral; valued by authors and users; accessible to the widest possible audience; and fully compliant with the Global Change Research Act and pertinent Federal laws and policies. In August 2023, comments were solicited through a 45-day request for information on the draft National Nature Assessment Prospectus (*https://www.federalregister.gov/documents/2023/08/04/2023-16794/draft-prospectus-for-the-first-national-nature-assessment*). Comments received on the draft Prospectus informed the list of potential topics included in Section I of the current request.

Author nominees may be invited to serve as Chapter Lead Authors, Authors, or Technical Contributors to NNA1. Chapter Lead Authors will, with input and guidance from the Federal Steering Committee (FSC), establish author teams comprising Federal and non-Federal experts. A Federal Coordinating Lead Author selected by the FSC will serve as a liaison between the author team and Federal agencies. For more information on author roles, see *https://www.globalchange.gov/nna.* Note that other roles may be developed by the FSC on an as needed basis as the report develops.

In addition, this request presents an opportunity to submit relevant scientific/technical inputs to inform the assessment, as well as Indigenous Knowledge inputs for similar use. This request also outlines planned opportunities for the public to engage in the NNA1 development process.

Additional details and instructions for submitting nominations for authors and scientific/technical inputs are available at *https://www.globalchange.gov/notices.* For the responsibilities and expectations of the different types of authors and contributors, please see *https://www.globalchange.gov/nna.*

All participation in and contributions to NNA1 will be without compensation and will be potentially included in the publicly released NNA. By voluntarily participating in the NNA1, you acknowledge the following:

- Participation in NNA1 means facilitating the development of NNA1, contributing new work to NNA1, or contributing pre-existing work for NNA1. Any such work will be incorporated into NNA1 at the discretion of the Federal Government, including the possibility of modification, without any compensation and without redaction under the Freedom of Information Act (FOIA) or otherwise.
- All contributions to NNA1 of text and original figures (those newly created for NNA1 and not previously published) will be released under the Creative Commons 1.0 Universal Public Domain Dedication (CC0 1.0). Such contributions will not be protected by copyright or other intellectual property rights. Data, algorithms/models, and software code used to create or support the creation of text and original figures will also be publicly released in connection with NNA1. In some cases, such data, algorithms/models, and software code may be subject to copyright restrictions prohibiting both their use for commercial purposes and the creation of derivative works, but any such restrictions may not prohibit their use for the purpose of reproducing results.
- Participants assume all risks associated with participation in NNA1. By participating, participants inherently waive all claims against the Federal Government and its related entities, except for claims based on willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits (whether direct, indirect, or consequential) arising from participation in NNA1.
- By participating, participants agree to indemnify the Federal Government in the event that it suffers liability or damages as a result of its use of the contribution.

Call for Nominations for Authors

Nominations are sought for authors with pertinent subject matter expertise or relevant background, including Indigenous Knowledge holders, in at least one of the topics delineated below. Nominees should have a demonstrated history of expertise and proficiency in at least one of the topics delineated below. Nominations are encouraged from all nongovernmental sectors.

The NNA Federal Steering Committee recognizes the value of Indigenous Knowledge that Tribal Nations and Indigenous peoples have gained and passed down from generation to generation and recognizes Indigenous Knowledge as one of many important bodies of knowledge that can contribute to NNA1. The FSC understands that multiple lines of evidence or ways of knowing can lead to better-formed assessments and encourages nominations of Indigenous Knowledge holders as Chapter Lead Authors, Authors, or Technical Contributors.

Submissions must document that nominees have demonstrated backgrounds such that they could contribute to the development of a robust assessment as subject matter experts in one or more of the listed topics. In addition, individuals interested in being considered for chapter leadership positions should have experience with leading collaborative teams under deadlines. Authors volunteering to assist in writing NNA1 are providing an important service to the United States. Author roles allow these volunteers to contribute to the first-ever national assessment of nature. In addition to providing an opportunity to inform policy, participation in NNA1 will allow authors to expand their professional networks and visibility, and to explore opportunities to create derivative products. The Federal Government will not provide financial compensation for these roles. The Federal Government is expected to provide travel costs to authors to attend meetings if requested for NNA1. Formal acknowledgment will be provided to each author's institution.

Responses to this request for nominations for authors must be submitted within 45 days of the opening of this notice. The nomination forms can be accessed via *https://www.globalchange.gov/notices.* Interested persons may nominate themselves or third parties for these roles, and individuals may submit multiple nominations.

Each nomination must include (1) the nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) the proposed NNA1 topic(s) (see below) for which the nominee is qualified; (4) a short description of the nominee's qualifications relative to contributing to the report; and (5) a current CV [maximum length four (4) pages].

Nominations with missing information, or for nominees who do not meet the eligibility requirements above, may not be considered.

NNA1 will attempt to address the full breadth of each topic and seeks a suitably diverse author pool, including Indigenous Knowledge holders, biophysical and social scientists, as well as traditionally underrepresented groups. Selection criteria for all author positions will consider expertise, disciplinary background, career status, diversity, and geographic representation.

Nominees may be invited to serve as Chapter Lead Authors, Authors, or Technical Contributors to NNA1.

Persons selected as Chapter Lead Authors will be informed after the close of the nominations window. Eligible nominees not selected as Chapter Lead Authors will be considered for roles as Authors or Technical Contributors.

The NNA1 report use-inspired and knowledge driven and will be organized around key thematic interests identified through Federal agency, public, and Tribal engagement efforts. These themes are detailed in the draft National Nature Assessment Prospectus (*https://www.federalregister.gov/documents/2023/08/04/2023-16794/draft-prospectus-for-the-first-national-nature-assessment*). The NNA1 report will include, but is not limited to, the following topics (subject to change):

- Assessment approach of NNA1
- The Status, Trends and Future Projections of Nature in the U.S.
- Status, Trends and Future Projections of Drivers of Change of Nature in the U.S.
- Nature and Equity
- Nature and Human Health and Wellbeing
- Nature and Its Relationship to Cultural Heritage
- Nature and Safety and Security
- Nature and the Economy

NNA1 seeks authors with expertise in the following areas (subject to change):

- Ecology, evolutionary biology, genetics, and other conservation-relevant biophysical sciences, including those with expertise in the status and trends in biodiversity and ecosystems (including nutrients), culturally important species, and climate adaptation and mitigation.
- Environmental social science including those with expertise in anthropology, sociology, geography, political science, psychology, and environmental history.
- Changes in nature as they relate to aspects of domestic safety and security, including natural hazards, desertification, changes in populations of pests and disease, loss of arable land, and other changes in nature that affect food and water security, and that directly or indirectly influence public safety and patterns of human behavior and movements.
- Connections between nature and human health and well-being, including physical, mental, and public health and well-being.
- Drivers of change in biodiversity and ecosystems.
- Economic activities, infrastructure, and employment that are directly or indirectly related to nature, including how changes in nature affect economic benefits, risks, and opportunities.
- Environmental justice and equity, including but not limited to topics such as access to nature and the benefits of nature, disproportionate impacts of environmental hazards, and equitable access to nature-based solutions.
- Data visualization and scientific graphics.
- Further, authors are welcome to nominate themselves for topics not listed above that are consistent with the scope of NNA1.

Call for Relevant Scientific/Technical Inputs To Inform NNA1:

Submissions of scientific/technical inputs are sought for NNA1. Relevant scientific and/or technical research studies—including observed, modeled, and/or projected changes in nature and/or benefits from nature—are requested. Scientific/technical inputs that are peer-reviewed and published, or accepted for publication, in journals and/or government reports are welcome. Please refer to the NNA1 topics list above to target submissions. Submissions of information for cross-cutting topics are especially encouraged. For best consideration, please submit by the close of this notice. Submissions must be uploaded electronically via the link provided at *https://www.globalchange.gov/notices.*

The NNA Federal Steering committee understands that Indigenous Knowledge may be sensitive, sacred, or belongs to certain families or clans, and recognizes concerns of Tribes and Indigenous Peoples regarding privacy or potential threats to natural or cultural resources. As such, the NNA Federal Steering committee will follow the guidance on Indigenous Knowledge provided by the White House Office of Science and Technology Policy and Council on Environmental Quality (*https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf*). We welcome discussion with Indigenous Knowledge holders regarding the potential benefits and risks of sharing Indigenous Knowledge, including the potential for public release under the Freedom of Information Act and other public disclosure obligations. When possible, the NNA team will collaborate with Tribal Nations and Indigenous Peoples to develop the means for information sharing that reduces the risk of disclosure. The NNA team will work with Tribes and Indigenous Peoples to facilitate informed decision making.

Notice of Planned Public Engagement Opportunities For NNA1:

Public engagement has been a priority for NNA1 with more than 25 public outreach activities to date. Multiple future opportunities for public engagement to inform NNA1 will be presented throughout the report's development. The following planned public engagement schedule is presented to notify the public of these coming opportunities. Note that the proposed time ranges are tentative and subject to change based on the timing of various development stages for NNA.

- Public comment on NNA1 annotated outline (Q2 2024)
- Public engagement workshops and webinars (Q2 2024 through Q3 2025)
- Public call for Review Editors (Q4 2025)
- Public comment on NNA1 Third Order Draft (Q3 & Q4 2025)
- National Academies of Sciences, Engineering, and Medicine peer review of NNA1 Third Order Draft (Q4 & Q5 2025)

Interested parties are invited to participate in these public engagement opportunities to ensure robust public input to NNA1. Specific dates and locations for all engagements will be provided on *https://www.globalchange.gov/notices* as they are determined.

Members of the public may also sign up to receive updates through USGCRP's bimonthly newsletter at *https://www.globalchange.gov/newsletter-signup.*

Jacob Malcom,

Director, Office of Policy Analysis Office of Policy, Management, and Budget.

[FR Doc. 2023–25573 Filed 11–17–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

[DT64101000.DSB4A0000.T7AC00.214A00; OMB Control Number 1035–0004]

Agency Information Collection Activities; Individual Indian Money (IIM) Instructions for Disbursement of Funds and Change of Address

AGENCY: Bureau of Trust Funds Administration (BTFA) (formerly known as Office of the Special Trustee for American Indians), Office of the Secretary.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Trust Funds Administration (BTFA) (formerly known as The Office of the Special Trustee for American Indians (OST) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 20, 2023.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Nina Alexander, 4400 Masthead NE, Albuquerque, NM 87109; or by email to *nina_alexander@btfa.gov.* Please reference OMB Control Number 1035–0004 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nina Alexander by email at *nina_alexander@btfa.gov,* or by telephone at (505) 273–1620. 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, 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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the BTFA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BTFA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BTFA minimize the burden of this collection on the respondents, including through the use of information technology.

A Federal Register notice soliciting public comments on the information collection was initially published on August 30, 2023 (81 FR 15120). No comments were received from the public in response to this notice, nor were comments received in response to the Paperwork Reduction Act statement associated with the collection for the three previous years.

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: As codified in 25 U.S.C. 4001, The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) makes provisions for the Bureau of Trust Funds Administration (BTFA) (formerly known as The Office of the Special Trustee for American Indians) to administer trust fund accounts for individuals and tribes. The collection of information is required to facilitate the processing of deposits, investments, and distribution of monies held in trust by the U.S. Government and administered by the BTFA. The collection of information provides the information needed to establish procedures to: Deposit and retrieve funds from accounts, perform transactions such as cashing checks, reporting lost or stolen checks, stopping payment of checks, change of address and general verification for account activities.

Title of Collection: Individual Indian Money (IIM) Instructions for Disbursement of Funds and Change of Address, 25 CFR 115.

OMB Control Number: 1035–0004.

Form Number: OST–01–004—Trust Funds for Tribes and Individual Indians, 25 CFR Party 115.

Type of Review: Renewal of a currently approved collection.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 11,059.

Total Estimated Number of Annual Responses: 11,059.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 2,765 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Non-hour 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*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–25593 Filed 11–17–23; 8:45 am]

BILLING CODE 4334–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0013]

Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 261

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Revised final notice of sale.

SUMMARY: On Wednesday, December 20, 2023, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 261 (GOM Lease Sale 261), in accordance with the Outer Continental Shelf Lands Act (OCSLA), as amended, and its implementing regulations. This revised GOM Lease Sale 261 Final Notice of Sale (Final NOS) package contains information

essential to potential bidders and comprises this notice, Information to Lessees, and Lease Stipulations. Bids submitted under the Revised Final NOS published on October 6, 2023 (see **SUPPLEMENTARY INFORMATION** below) will be held and opened on December 20, 2023, unless the bidders withdraw their bid or bids in accordance with the bid withdrawal procedures described in Section VIII—''Bid Withdrawal.''

DATES: BOEM will hold GOM Lease Sale 261 at 9 a.m. on Wednesday, December 20, 2023. All times referred to in this document are Central time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids prior to the Bid Submission Deadline of 10 a.m. on Tuesday, December 19, 2023, the day before the lease sale. For more information on bid submission, see Section VII of this document, ''Bidding Instructions.''

ADDRESSES: Bids will be accepted by MAIL ONLY through any parcel delivery service (*e.g.,* FedEx, UPS, U.S. Postal Service, DHL), prior to the bid submission deadline, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. Public bid reading for GOM Lease Sale 261 will be held at 1201 Elmwood Park Boulevard, New Orleans, Louisiana. The venue will not be open to the general public, media, or industry during bid opening or reading. Bid opening will be available for public viewing on BOEM's website at *https://www.boem.gov/Sale-261/* via live-streaming video beginning at 9:00 a.m. on the date of the sale. The results will be posted on BOEM's website upon completion of bid opening and reading. Interested parties may download the Final NOS package from BOEM's website at *https://www.boem.gov/Sale-261/.* Copies of the sale maps can be obtained by contacting the BOEM GOM Region: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

FOR FURTHER INFORMATION CONTACT: The New Orleans Office Lease Sale Coordinator, Greg Purvis, at *BOEMGOMRLeaseSales@boem.gov* or 504–736–1729.

SUPPLEMENTARY INFORMATION: The Inflation Reduction Act of 2022 (IRA) directed BOEM to hold GOM Lease Sale 261 by September 30, 2023. On August 25, 2023, BOEM published in the **Federal Register** the Final NOS for Lease Sale 261, which originally scheduled GOM Lease Sale 261 for September 27, 2023, in compliance with the IRA. See 88 FR 58310.[1] Two lawsuits then challenged the Final NOS in the U.S. District Court for the Western District of Louisiana. To implement the Memorandum Order [2] issued by the U.S. District Court for the Western District of Louisiana on September 21, 2023 (Case No. 2:23–CV–01157), and a subsequent order [3] issued by the U.S. Court of Appeals for the Fifth Circuit on September 26, 2023 (Case No. 23–30666), BOEM published a revised Final Notice of Sale on October 6, 2023, which rescheduled the sale, revised the sale area to include the blocks that were the subject of the courts' orders, modified the Lease Stipulations to remove the protected species language that was the subject of the courts' orders, updated the Information to Lessees, published a revised List of Available Blocks, and published new maps related to the sale. See 88 FR 69660. However, on October 26, 2023, the Fifth Circuit stayed the injunction that required BOEM to hold the sale by November 8. In light of the October 26 order, BOEM announced it was postponing the sale pending additional disposition of the appeal and additional direction from the Fifth Circuit. See 88 FR 77363. The Fifth Circuit issued an opinion and mandate on November 14, 2023, directing BOEM to hold the sale in accordance with the district court's preliminary injunction but extending the deadline for conducting the sale by 37 days from the date of the mandate.

Thus, in accordance with the Fifth Circuit's mandate and opinion, this revised Final NOS and associated documents provide notice to the public and potential bidders of the updated timing for Lease Sale 261 and makes no additional changes to the revised Final NOS published on October 6, 2023.

BOEM advises bidders that Lease Sale 261 is the subject of ongoing litigation in the U.S. District Court for the District of Columbia and the U.S. District Court of the Western District of Louisiana.

Authority: This revised notice of sale is published pursuant to 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.308(a).

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X. The Lease Sale
XI. Delay of Sale

I. Lease Sale Area

Blocks Offered for Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the GOM OCS as identified on the map, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 261, December 2023, Final Sale Area'' (*https://www.boem.gov/Sale-261/*), except those blocks listed below in ''Blocks Not Offered for Leasing.'' Please note that, in compliance with the aforementioned court orders, the expanded Rice's whale area (whole and partial blocks between the 100 meter (m) and 400 m isobaths across the northern GOM OCS, eastward from the Mexican border with Texas and westward from the eastern edge of the Central Planning Area) that was previously excluded from the sale is now included in Lease Sale 261, unless such blocks are otherwise subject to a separate exclusion not addressed by the District Court's injunction and listed below.

Blocks Not Offered for Leasing: BOEM will exclude the following whole and partial blocks from this sale. The BOEM Official Protraction Diagrams (OPDs) and Supplemental OPDs are available online at *https://www.boem.gov/oil-gas-energy/mapping-and-data.*

- Whole and Partial Blocks withdrawn from leasing by Presidential Withdrawal in the September 8, 2020, *Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition:*

GOM protraction areas	Block
Pensacola (Leasing Map NH 16–05)	Whole Blocks: 751–754, 793–798, 837–842, 881–886, 925–930, 969–975.

[1] *https://www.federalregister.gov/documents/2023/08/25/2023-18342/gulf-of-mexico-outer-continental-shelf-oil-and-gas-lease-sale-261.*

[2] *https://www.courtlistener.com/docket/67727401/82/state-of-louisiana-v-haaland/.*

[3] *https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/23-30666_order.pdf.*

GOM protraction areas	Block
Destin Dome (Leasing Map NH 16–08)	Whole Blocks: 1–7, 45–51, 89–96, 133–140, 177–184, 221–228, 265–273, 309–317, 353–361, 397–405, 441–450, 485–494, 529–538, 573–582, 617–627, 661–671, 705–715, 749–759, 793–804, 837–848, 881–892, 925–936, 969–981.
DeSoto Canyon (Leasing Map NH 16–11)	Whole Blocks: 1–15, 45–59, 92–102. Partial Blocks: 16, 60, 61, 89–91, 103–105, 135–147.
Henderson (Leasing Map NG 16–05)	Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, 423.

• Whole and Partial Blocks within the boundary of the Flower Garden Banks National Marine Sanctuary (East and West Flower Garden Banks and the Stetson Bank) as of the July 14, 2008, *Memorandum on Modification of the Withdrawal of Areas of United States Outer Continental Shelf from Leasing Disposition:*

GOM protraction areas	Block
High Island, East Addition, South Extension (Leasing Map TX7C).	Whole Block: A–398. Partial Blocks: A–366, A–367, A–374, A–375, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.
High Island, South Addition (Leasing Map TX7B).	Partial Blocks: A–502, A–513.

• Whole and Partial Blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:

GOM protraction areas	Block
Lund South (Leasing Map NG 16–07)	Whole Blocks: 128, 129, 169–173, 208–217, 248–261, 293–305, 349.
Henderson (Leasing Map NG 16–05)	Whole Blocks: 466, 508–510, 551–554, 594–599, 637–643, 679–687, 722–731, 764–775, 807–819, 849–862, 891–905, 933–949, 975–992. Partial Blocks: 335, 379, 423, 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, 994.
Florida Plain (Leasing Map NG 16–08)	Whole Blocks: 5–24, 46–67, 89–110, 133–154, 177–197, 221–240, 265–283, 309–327, 363–370.

• Depth-restricted, segregated block portion(s). The current block meeting this criterion is: Block 299, Main Pass Area, South and East Addition (as shown on Louisiana Leasing Map LA10A), containing 1,125 acres from the surface of the earth down to a subsea depth of 1,900 feet with respect to the following described portions:

SW¼NE¼; NW¼SE¼NE¼;
W½NE¼SE¼NE¼;
S½S½NW¼NE¼;
S½SW¼NE¼NE¼;
S½SW¼SE¼NE¼NE¼;
N½SW¼SE¼ NE¼;
SW¼SW¼SE¼NE¼; NW¼SE¼ SE¼ NE¼;
N½NW¼SW¼SE¼SE¼NE¼;
N½SE¼SW¼SE¼NE¼;
N½S½SE¼SW¼SE¼NE¼;
S½NE¼NW¼;
S½S½N½NE¼NW¼;
N½SE¼NW¼;S½SE¼NW¼NW¼;
NE¼SE¼ NW¼NW¼;
E½NE¼SW¼NW¼;
N½SE¼SE¼NW¼;
NE¼SW¼SE¼NW¼;
N½NW¼SW¼SE¼NW¼;
SE¼SE¼SE¼NW¼;
E½SW¼SE¼SE¼NW¼;
N½NW¼NE¼SW¼NW¼;
N½S½NW¼NE¼SW¼NW¼;
N½N½NE¼NE¼NE¼SW¼;
N½N½N½NW¼NW¼SE¼;
N½N½NW¼NE¼NW¼SE¼

• Whole and Partial Blocks that were previously subject to the Blocks South of Baldwin County, Alabama, Stipulation:

GOM protraction areas	Blocks
Mobile (Leasing Map NH16–04)	826–830, 869–874, 913–918, 957–962, 1001–1006.
Viosca Knoll (Leasing Map NH 16–07)	33–35.

• Whole and Partial Blocks that were previously subject to the Topographic Features Stipulation:

GOM protraction area	Blocks
East Breaks (Leasing Map NG 15–01)	121–124, 165–168, 173, 217.
East Cameron Area (Leasing Map LA2)	361–363, 377–379.
Eugene Island Area (Leasing Map LA4)	335, 355–356, 381–383, 390–391, 397.
Ewing Bank (Leasing Map NH 15–12)	903, 932–933, 944–945, 947, 975–977.
Garden Banks (Leasing Map NG 15–02)	26–31, 33, 61–63, 70–77, 81–85, 95–98, 102–110, 119–121, 126–128, 133–136, 138–146, 148–155, 177–180, 192–198, 237–239.
Green Canyon (Leasing Map NG 15–03)	4–7, 49–50, 90.

GOM protraction area	Blocks
High Island Area, East Addition (Leasing Map TX7A).	A446–A448, A463–A465, A486–A488, A501–A503, A512–A514, A527–A529, A534–A535, A573, A578–A580, A589–A591, A596.
High Island Area, East Addition, South Extension (Leasing Map TX7C).	A311–312, A 327–A 332, A 340, A 346–A403.
Mississippi Canyon (Leasing Map NH 16–10)	316.
Mustang Island Area (Leasing Map TX3)	A3–4, A9, A16, A54, A61–A62, A86–A87, A95, A117–A118, A136–A137.
North Padre Island Area (Leasing Map TX2)	PN A30–A31, A40–A41, A72, A83–A84
South Marsh Island Area, North Addition (Leasing Map LA3D)..	161–163, 169–173, 176–180, 185–188, 193–197, 200–204.
Ship Shoal Area (Leasing Map LA5)	325–329, 334–339, 348–353, 356–359.
South Timbalier Area (Leasing Map LA6)	314–317.
Vermilion Area (Leasing Map LA3)	284–286, 297–300, 303–306, 317–320, 361–363, 369–372, 382–396, 403–412.
West Cameron Area (Leasing Map LA1)	569–570, 589–592, 611–614, 633–638, 645–646, 648–663.
West Delta Area (Leasing Map LA8)	147–148.

• Whole blocks that contain banks that are adjacent to blocks previously included in the Topographic Features Stipulation:

GOM protraction area	Blocks
Garden Banks (Leasing Map NG 15–02)	181.

• Whole and Partial Blocks that were previously subject to the Live Bottom (Pinnacle Trend) Stipulation:

GOM protraction area	Blocks
Main Pass Area, South and East Addition (Leasing Map LA10A).	190, 194, 198, 219–226, 244–266, 276–290.
Viosca Knoll (Leasing Map NH 16–07)	473–476, 521–522, 564–566, 610, 654, 692–698, 734, 778.

• Whole and partial blocks identified as either Wind Energy Area Options (Areas A, B, C, D, E, F, G, H)) or final Wind Energy Areas (Areas I, J, K, L, M and N):

GOM protraction area	Blocks
Brazos Area (Leasing Map TX5)	430, 457–459, 466–468, 572–575, 580–584, 609–614, A22, A28–A29, A3, A30–A35, A42–A43.
Brazos Area, South Addition (Leasing Map TX5B).	A102–A105, A46–A48, A55–A58, A60–A61, A73–A74.
East Cameron Area (Leasing Map LA2)	96–106, 113–124.
Galveston Area (Leasing Map TX6)	237, 258–259, 265–268, 286–291, 293–299, 317–327, 350–356, 386–387, 427–429, 460–462, 464–465, A1–A9, A10–A35, A40–A49, A62–A77, A84–A86, A91–A94, A97–A99, A103–A105, A110–A113.
Galveston Area, South Addition (Leasing Map TX6A).	A114–A119, A138–A139, A140–A148, A169–A174, A203.
High Island Area (Leasing Map TX7)	235–236, 260–261, 263–264, 292, A2–A4, A11–A15, A27–A31, A62–A64, A66–A68, A70–A90, A92–A99, A100–A111, A113–A116, A118–A142, A144–A152, A156–A163, A165–A166.
High Island Area, East Addition (Leasing Map TX7A).	A170–A174, A177–A182, A187–A193, A195–A199, A202–A209, A211–A213, A216–217, A220–A228, A233–A241, A250–A251.
High Island Area, South Addition (Leasing Map TX7B).	A404–A405, A408–A413, A420–A425, A428–A431, A434–A439, A454–A457, A480–A481.
Matagorda Island Area (Leasing Map TX4)	639–642, 646–649, 673–678, A1, A3, A4.
Mustang Island Area (Leasing Map TX3)	803–804, 810–812, 826–828, 832–834, 847–849, 853–854.
South Padre Island Area, East Addition (Leasing Map TX1A).	1078, 1097–1098, 1117–1119, A35–A36, A46–A52, A59–A64.
West Cameron Area (Leasing Map LA1)	188–190, 195–196, 205–213, 224–230, 241–245, 256.
West Cameron Area, West Addition (Leasing Map LA1A).	302–303, 314–318, 328–334, 343–352, 359–360, 362–364, 372–379, 393–396, 398–400.

• Whole and Partial BOEM-designated Significant Sediment Resource Area Blocks:

GOM protraction area	Blocks
Bay Marchand Area (Leasing Map LA6C)	2–5.
Breton Sound Area (Leasing Map LA10B)	24, 25, 39, 41–44, 53–56.
Chandeleur Area (Leasing Map LA11)	1, 4, 5, 8, 16, 28, 30–34.
Eugene Island Area (Leasing Map LA4)	10, 18–35, 37–96, 111, 112.
Galveston Area (Leasing Map TX6)	265, 290, 291, 293, 294, 295, 322.
Galveston Area, South Addition (Leasing Map TX6A).	1A, 2A, 3A, 4A, 5A.
Grand Isle Area (Leasing Map LA7)	15, 25.
High Island Area (Leasing Map TX7)	19–21, 35–39, 45–49, 60–65, 69–76, 83–91, 111–119, 131–137, 158–164, 171–175, 196–205, 230–234, 261–264, 292, A6–A10, A16–A22, A37–A42, A60–A65.
High Island Area, East Addition (Leasing Map TX7A).	6, 10, 38–42, 45, 46, 60–65, 74–76, 83, 84, 85.
Mobile (Leasing Map NH 16–04)	765–767, 778, 779, 809–824, 826–830, 853–874, 897–918, 942, 946, 947, 954–962, 991, 999–1006.
Main Pass Area (Leasing Map LA10)	6, 39–44, 58–60, 86–90, 92–120, 125–129, 139.
Main Pass, South and East Addition (Leasing Map LA10A).	161, 162, 180, 181.
South Pelto Area (Leasing Map LA6B)	1–20, 23–25.
Sabine Pass Area (LA) (Leasing Map LA12)	8–16.
South Marsh Island Area, North Addition (Leasing Map LA3D).	207–237, 241–249, 259–261, 267, 268.
Ship Shoal Area (Leasing Map LA5)	24–26, 37, 38, 63–75, 84–100, 107–114, 119, 120.
South Timbalier Area (Leasing Map LA6)	9–11, 16–18, 34, 51, 52, 54, 55, 66, 67, 72.
Sabine Pass Area (TX) (Leasing Map TX8)	9, 17, 18, 40, 44.
Viosca Knoll (Leasing Map NH 16–07)	23, 34–38, 67, 78–82, 111, 155.
Vermilion Area (Leasing Map LA3)	11, 30, 49, 51–54, 68–77, 86–96, 108–111.
West Cameron Area (Leasing Map LA1)	20–22, 41–45, 56–60, 78–83, 90–95, 113–118, 128–134, 146–150, 153–157, 160, 161, 162, 168–172, 181.
West Cameron Area, West Addition (Leasing Map LA1A).	154–157, 160–162, 287.
West Delta Area (Leasing Map LA8)	20–31, 32, 43–50, 56–61.

The final list of blocks available for bid is posted on BOEM's website at *https://www.boem.gov/Sale-261/* under the Final NOS tab.

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331 *et seq.,* as amended, and is subject to OCSLA implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

BOEM reserves the right to reject any and all bids received, regardless of the amount offered (see 30 CFR 556.516).

III. Lease Terms and Economic Conditions

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at *https://www.boem.gov/BOEM-2005.* The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The final terms, conditions, and stipulations applicable to this sale are below.

Primary Terms

Primary terms are summarized in the following table:

Water depth (meters)	Primary term
0 to <400	The primary term is 5 years; the lessee may earn an additional 3 years (i.e., for an 8-year extended primary term) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVDSS) during the first 5 years of the lease.
400 to <800	The primary term is 5 years; the lessee will earn an additional 3 years (*i.e.,* for an 8-year extended primary term) if a well is spudded during the first 5 years of the lease.
800+	10 years.

(1) The primary term for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVDSS within the first 5 years of the lease, then

the lessee may earn an additional 3 years, resulting in an 8-year primary term. The lessee will earn the 8-year primary term when the well is drilled to a target below 25,000 feet TVDSS; or the lessee may earn the 8-year primary term in cases where the well targets, but does not reach, a depth below 25,000 feet TVDSS due to mechanical or safety reasons that are beyond the lessee's control, and that are supported by sufficient evidence from the lessee. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after completion of the drilling operation, providing the well number, spud date, information demonstrating a target below 25,000 feet TVDSS and whether that target was reached, and if applicable, any safety or mechanical reasons encountered that prevented the well from reaching a depth below 25,000 feet TVDSS. In the letter, the lessee must request confirmation from BOEM that the lessee earned the 8-year primary term. The BOEM GOM Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter, whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM. A lessee that has earned the 8-year primary term by spudding a well with a hydrocarbon target below 25,000 feet TVDSS during the standard 5-year primary term of the lease will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The primary term for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is 5 years. If the lessee spuds a well within the 5-year primary term of the lease, the lessee may earn an additional 3 years, resulting in an 8-year primary term. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, providing the well number and spud date, and requesting confirmation from BOEM that the lessee earned the 8-year extended primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(3) The primary term for a lease in water depths 800 meters or deeper issued as a result of this sale is 10 years.

Minimum Bonus Bid Amounts

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to or exceeding the specified minimum bid, as described below.

- $25 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates, per acre or fraction thereof, are summarized in the following table:

Water depth (meters)	Years 1–5	Year 6	Year 7	Year 8+
0 to <200	$10	$20	$30	$40
200 to <400	16	32	48	64
400+	16	22	22	22

Escalating Rental Rates for Leases With an 8-Year Primary Term in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year primary term will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate if another well is spudded targeting hydrocarbons below 25,000 feet TVDSS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18¾ percent for all leases.

Minimum Royalty Rate

- $10 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $16 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The Department may issue leases with Royalty Suspension Volumes (RSVs) and other forms of royalty relief under 30 CFR part 560, which BOEM administers. The specific details relating to eligibility and implementation of RSVs and other royalty relief programs are found at 30 CFR part 203, which the Bureau of Safety and Environmental Enforcement administers. In this sale, the only royalty relief program being offered involves RSVs for the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following section.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Pursuant to 30 CFR part 203, certain leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVDSS or deeper receive an RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594 (2005)).

IV. Lease Stipulations

On September 21, 2023, the U.S. District Court for the Western District of Louisiana issued an order [4] requiring BOEM to modify, for purposes of this sale, the version of Stipulation No. 4 originally published in the August 2023, Final NOS package. On November 14, 2023, the U.S. Court of Appeals for the Fifth Circuit dismissed an appeal challenging the aforementioned order and reinstated the September 21 order of the District Court, with a modified sale deadline. To comply with this order, Stipulation No. 4 no longer contains the enhanced protection measures for the Rice's whale that previously appeared under paragraph

[4] *https://www.courtlistener.com/docket/67727401/82/state-of-louisiana-v-haaland/.*

(B)(4). BOEM has published a revised Lease Stipulations document for this sale on its website, available at *https://www.boem.gov/Sale-261/.*

One or more of the stipulations below may be applied to leases issued as a result of this sale. The applicable blocks for each stipulation are identified on the map ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 261, December 2023, Stipulations and Deferred Blocks'' included in the Final NOS package. The full text of the following stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package. BOEM has posted the final list of blocks available for bid and the applicable stipulations that apply to those blocks on its website at *https://www.boem.gov/Sale-261/* under the Final NOS tab.

(1) Military Areas
(2) Evacuation
(3) Coordination
(4) Protected Species
(5) United Nations Convention on the Law of the Sea Royalty Payment
(6) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico
(7) Restrictions due to Rights-of-Use and Easement for Floating Production Facilities
(8) Royalties on All Produced Gas

V. Information to Lessees

Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the ''Information to Lessees'' section of the Final NOS package and covers the following topics.

(1) Navigation Safety
(2) Ordnance Disposal Areas
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(4) Lightering Zones
(5) Indicated Hydrocarbons List
(6) Military Areas
(7) Bureau of Safety and Environmental Enforcement Inspection and Enforcement of Certain U.S. Coast Guard Regulations
(8) Significant Outer Continental Shelf Sediment Resource Areas
(9) Notice of Arrival on the Outer Continental Shelf
(10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(11) Protected Species
(12) Expansion of the Flower Garden Banks National Marine Sanctuary
(13) Communication Towers
(14) Deepwater Port Applications (DWP) for Offshore Oil and Liquefied Natural Gas Facilities
(15) Ocean Dredged Material Disposal Sites
(16) Rights-of-Use and Easement
(17) Industrial Waste Disposal Areas
(18) Gulf Islands National Seashore
(19) Air Quality Permit/Plan Approvals
(20) Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States
(21) Inflation Reduction Act of 2022

VI. Maps

The maps pertaining to this lease sale can be viewed on BOEM's website at *https://www.boem.gov/Sale-261/.* The following maps also are included in the Final NOS package:

Sale Area Map

The sale area is shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 261, December 2023, Final Sale Area.''

Lease Terms and Economic Conditions Map

The lease terms and economic conditions associated with leases of certain blocks are shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico Oil and Gas Lease Sale 261, December 2023, Lease Terms and Economic Conditions.''

Stipulations and Deferred Blocks Map

The lease stipulations and the blocks to which they apply are shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 261, December 2023, Stipulations and Deferred Blocks.''

VII. Bidding Instructions

BOEM will return, unopened, all bids submitted by bidders under the previously issued Final NOS if the bidder submits a formal withdrawal request as outlined in the Bid Withdrawal procedures. Bidders wishing to participate in Lease Sale 261 must submit new bids or resubmit their returned bids in accordance with the terms and conditions contained in this revised Final NOS.

Bids may be submitted BY MAIL ONLY through any parcel delivery service (*e.g.,* FedEx, UPS, USPS, DHL) at the address below in the ''Mailed Bids'' section. Bidders should be aware that BOEM has eliminated in-person bidding for GOM Lease Sale 261. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following items:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer. Electronic signatures are acceptable. The typed name, title, and signature must agree exactly with the name and title on file in the BOEM Gulf of Mexico OCS Region Adjudication Section;
- Each bidder's BOEM qualification number;
- Map name and number or OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of high bids.

The information required for each bid is specified in the document ''Bid Form'' that is available in the Final NOS package, which can be found at *https://www.boem.gov/Sale-261/.* A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for GOM Lease Sale 261, not to be opened until 9 a.m. Wednesday, December 20, 2023'';
- Map name and number or OPD name and number;
- Block number for block bid upon;
- Acreage, if the bid is for a block that is split between the Central and Eastern Planning Areas; and
- The exact name and qualification number of the submitting bidder only.

The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

Please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and

Financial Responsibility Section, BOEM New Orleans Office, 1201 Elmwood Park Boulevard MS–266A, New Orleans, Louisiana 70123–2394, Contains Sealed Bids for GOM Lease Sale 261. Please Deliver to Mr. Greg Purvis, 2nd Floor, Immediately.

Please Note: Bidders are advised to inform BOEM by email at *BOEMGOMRLeaseSales@boem.gov* immediately after placing bid(s) in the mail. This provides advance notice to BOEM regarding pending bids prior to the bid submission deadline. In the email, please state the tracking number of the bid package, the number of bids being submitted, and the email address of the person who should receive the bid receipt for signature. If BOEM receives bids later than the bid submission deadline, the BOEM GOM Regional Director (RD) will return those bids unopened to bidders. Please see Section XI, ''Delay of Sale,'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that have ever defaulted on a one-fifth bonus bid deposit, must guarantee (secure) the payment of the one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend a development stage area-wide bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking number for the payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted so that BOEM can confirm payment with the Office of Natural Resources Revenue (ONRR). Bidders should submit payments to their financial institution at least 5 business days prior to bid submittal to ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have time to screen and process payments and that payments are posted to ONRR prior to placing the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR before 10 a.m. on Tuesday, December 19, 2023.

If providing a third-party guarantee, amending a development stage area-wide bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file these documents with BOEM well in advance of submitting the bid. This allows processing time and ensures bidders have time to take any necessary curative actions prior to bid submission. For more information on EFT procedures, see Section X, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM–2032 (February 2020, available on BOEM's website at *https://www.boem.gov/BOEM-2032/*) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (February 2020, available on BOEM's website at *https://www.boem.gov/BOEM-2033/*) with the BOEM GOM Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by E.O. 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) A ''Statement'' page that includes the company representatives' information and separate lists of blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;

(2) A ''Table'' listing the required data about each proprietary survey used (see below); and

(3) ''Maps'' that contain the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in GOM Lease Sale 261 or participating as a joint bidder in such a bid must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Please specify on the outside of the GDIS envelope if the information provided is for a joint bid, and if so, include the block number and primary bidder (company submitting the bid). Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The bidder and joint bidder must submit the GDIS in a separate and sealed envelope and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO) data, gravity data, and/or magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* pdf and ArcGIS shapefile) for each proprietary survey identified in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). The shape file must not include cultural resources information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement must also include a list of all blocks bid upon, including those blocks where no proprietary or reprocessed geophysical data and/or proprietary information was used, as a basis for the bidder's decision to bid or to participate as a joint bidder in the bid. All GDIS statements must be included *with* any submitted bids in a separate envelope identified as GDIS. All bidders must submit the GDIS statement, even if no proprietary geophysical data or information was used in its bid preparation for the block.

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table can be accessed on the GOM Lease Sale 261 website at *https://www.boem.gov/Sale-261/.* The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- The company that will provide the proprietary geophysical survey data to BOEM;
- The block area and block number bid upon;
- The owner of the original data set (*e.g.,* TGS, PGS, WGC, CGG, etc.);
- The industry's original name of the survey (*e.g.,* E Octopus);
- The BOEM permit number for the survey;

- Whether the data set is a fast-track version (intermediate product that is not final);
- Whether the data is speculative or proprietary;
- The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; time or depth);
- The migration algorithm (*e.g.,* Kirchhoff migration, wave equation migration, reverse migration, reverse time migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D);
- The live proprietary survey coverage (2–D miles 3–D blocks);
- The computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block;
- Who reprocessed the data;
- The date on which the final reprocessing was completed (month and year);
- If the data was previously sent to BOEM, list the sale number and date of the sale for which it was used;
- Whether proprietary or speculative AVO/AVA (PROP/SPEC) was used;
- The date on which AVO or AVA was sent to BOEM, if sent prior to the sale;
- Whether AVO/AVA is time or depth (PSTM or PSDM);
- Which angled stacks were used (*e.g.,* NEAR, MID, FAR, ULTRAFAR);
- Whether the company used Gathers to evaluate the block in question; and
- Whether the company used Vector Offset Output (VOO) or Vector Image Partitions (VIP) to evaluate the block in question.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the ''Example of Preferred Format'' that is included in the Final NOS package.

The GDIS maps are live trace maps (*e.g.,* pdf and ArcGIS shapefiles) that bidders should submit for each proprietary survey identified in the GDIS table. The maps should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). As previously stated, the shapefile must not include cultural resources information, only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 556.501, as a condition of the sale, the BOEM GOM Regional Director requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data should not be submitted to BOEM unless specifically requested by BOEM. No reimbursement will be provided for unsolicited data sent to BOEM. The BOEM GOM RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 calendar days of the lease sale. Where the BOEM GOM RD has notified bidders and joint bidders that the request for such proprietary data has been withdrawn, reimbursement will not be provided. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data are received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. Please do not submit proprietary geophysical survey data in the GDIS envelope.

The proprietary geophysical survey data must be submitted to BOEM at the following address within 30 days of the sale as stated above: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123–2304.

The GDIS must be submitted along with your bid envelope to: Leasing and Financial Responsibility Section, BOEM New Orleans Office, 1201 Elmwood Park Boulevard MS–266A, New Orleans, Louisiana 70123–2394. Contains Sealed Bids for GOM Lease Sale 261. Please Deliver to Mr. Greg Purvis, 2nd Floor, Immediately.

BOEM recommends that bidders mark the GDIS submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that bidders submit the GDIS in an internal envelope, or otherwise marked, with the following designation: ''Geophysical Data and Information Statement for Oil and Gas Lease Sale 261'', Company Name, GOM Company Qualification Number, and ''Proprietary Data.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update an entity's records. The website for registering is *https://usfcr.com/register-renew/.*

(2) Must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing; to enroll go to *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

(3) Must have a current On-line Representations and Certifications Application at *https://usfcr.com/.*

Please Note: Digital copies and duplicate hardcopies should be submitted for the GDIS Statement, Table and Maps. The GDIS Statement should be sent as a digital PDF. The GDIS Information Table must be submitted digitally as an Excel spreadsheet. The Proprietary Maps should be sent as PDF files and the live trace outline of each proprietary survey should also be submitted as a shapefile. Please flatten all layered PDF files, since layered PDFs can have many objects. Layered PDFs can cause problems opening or printing the file correctly. Bidders may submit the digital files on a CD, DVD, or any USB external drive (formatted for Windows). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706 or Ms. Teree Campbell at (504) 736–3231.

Bidders should refer to the ''Acceptance, Rejection, or Return of Bids'' heading under Section X, ''The Lease Sale,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information required in the Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 556.401, 556.501, and 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On October 6, 2023, BOEM published the Fall 2023 List of Restricted Joint Bidders in the **Federal Register** at 88 FR 69658. Potential bidders are advised to refer to the List of Restricted Joint Bidders that is in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–556.515.

Authorized Signatures

All signatories executing documents on behalf of the bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including that requiring payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the bid submission deadline via any parcel delivery service. Withdrawals will not be accepted in person or via email. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM GOM RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks are shown in the document ''List of Blocks Available for Leasing'' that is included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM will round up to the next whole acre. The appropriate minimum rate per acre will be applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid, as calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at *https://www.boem.gov* via live streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at *https://www.boem.gov/Sale-261/* under the heading ''Notification of EFT ⅕ Bonus Liability'' after 1 p.m. on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 1 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM website identified above.

Bidders must submit payment to their financial institution as soon as possible on the day of bid reading and no later than 7 p.m. Eastern Time on the day of bid reading. This will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for GOM Lease Sale 261, following the detailed instructions contained on the ONRR Payment Information web page at *https://www.onrr.gov/paying.* Acceptance of a deposit does not constitute, and will not be construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids, regardless of the amount offered. Furthermore, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS, OCSLA, or other applicable statutes or regulations will be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for any antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for GOM Lease Sale 261

To ensure that the U.S. Government receives fair market value for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with the bid adequacy procedures that are effective on the date of the sale. The bid adequacy procedures are available on BOEM's website at *https://www.boem.gov/oil-gas-energy/leasing/bid-adequacy-procedures.*

Lease Award

Leases issued as a result of GOM Lease Sale 261 are expressly limited to oil and gas exploration and development. As noted in Section 19 of the lease form, all rights in the leased

area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor.

BOEM requires each bidder that is awarded a lease to complete the following:

(1) Execute all copies of the lease (Form BOEM–2005 [February 2017], as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 1218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that bidders use only one transaction for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM GOM RD has the discretion to change any date, time, and/or location specified in the Final NOS package if the RD deems that an emergent event could interfere with a fair and orderly lease sale. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. Furthermore, the RD may change the date, time, and/or location of the lease sale to comply with court orders. In case of such events, bidders should call (504) 736–0557 or access the BOEM website at *https://www.boem.gov/* for information regarding any changes.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–25634 Filed 11–17–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0048; Docket ID: BOEM–2023–0004]

Agency Information Collection Activities; Geological and Geophysical Explorations of the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew Office of Management and Budget (OMB) control number 1010–0048.

DATES: Comments must be received by the OMB desk officer no later than December 20, 2023.

ADDRESSES: Submit your written comments on this ICR to the OMB's desk officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain.* From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by parcel delivery service or U.S. mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0048 in the subject line of your comments. You may also comment by searching the docket number ''BOEM–2023–0004'' at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside of the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Title of Collection: 30 CFR part 551, ''Geological and Geophysical Explorations of the Outer Continental Shelf.''

Abstract: This ICR concerns the paperwork requirement in the regulations at 30 CFR part 551. This request also covers Form BOEM–0327, ''Requirements for Geological and Geophysical Explorations or Scientific Research on the Outer Continental Shelf.''

Section 11(g) of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1340(g)), authorizes the Secretary of the Interior to prescribe regulations to govern the issuance of permits for geological and geophysical (G&G) exploration on the Outer Continental Shelf (OCS). The OCSLA states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [OCS], which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area.'' 43 U.S.C. 1340(a)(1). It further provides that permits to conduct such activities may only be issued if BOEM determines that the applicant is qualified; the activities will not interfere with or endanger operations under any lease issued or maintained pursuant to OCSLA; and the activities will not be unduly harmful to aquatic life, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archaeological significance. 43 U.S.C. 1340(g)(1)–(3).

BOEM requires applicants for G&G permits to submit Form BOEM–0327 to provide the information necessary to evaluate their qualifications. Upon BOEM approval of the application, BOEM issues to the applicant the appropriate permit: Form BOEM–0328, ''Permit for Geophysical Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf,'' for geophysical exploration or Form BOEM–0329, ''Permit for Geological Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf,'' for geological exploration. BOEM completes these permit forms; applicants do not incur any paperwork burden related to Forms BOEM–0328 and –0329.

Requirements for G&G exploration or scientific research on the OCS are contained in 30 CFR part 551 and are the subject of this ICR. BOEM is also renewing Form BOEM–0327. This form outlines the requirements for G&G activities requiring permits and notices. This form also contains the application that applicants submit to BOEM and a nonexclusive use agreement for scientific research, if applicable.

OMB Control Number: 1010–0048.

Form Number: BOEM–0327, ''Requirements for Geological and Geophysical Explorations or Scientific

Research on the Outer Continental Shelf.''

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur permittees or notice filers.

Total Estimated Number of Annual Responses: 578 responses.

Total Estimated Number of Annual Burden Hours: 21,454 hours.

Respondent's Obligation: Required to retain or obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-Hour Burden Cost: $116,696.

The currently approved OMB paperwork burden is 35,254 annual burden hours, 688 annual responses, and $136,816 in non-hour costs. Due to a reduction in the number of annual responses to 578, the annual burden for this renewal is adjusted to 21,454 hours, and the non-hour cost burden is adjusted to $116,696.

A *Federal Register* notice with a 60-day public comment period on the proposed ICR was published on July 17, 2023 (88 FR 45444). BOEM did not receive any comments.

BOEM is again soliciting comments on the proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record and will be available for public review on *www.reginfo.gov.* BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your submission is requested under FOIA, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations (43 CFR part 2) and applicable law.

For BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Note that BOEM will make available for public inspection all comments in their entirety (except for proprietary information submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses).

BOEM protects proprietary information in accordance with FOIA (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2).

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.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023–25588 Filed 11–17–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Passive Optical Network Equipment, DN 3707;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Optimum Communications Services, Inc. on November 14, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain passive optical network equipment. The complaint names as respondents: Hangzhou Softel Optic Co., Ltd. of China; Hangzhou Fullwell Optoelectronic Equipment Co., Ltd. of China; and Hangzhou Sumlo Industrial Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3707'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary *at EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 14, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–25533 Filed 11–17–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–489 and 731–TA–1201 (Second Review)]

Drawn Stainless Steel Sinks From China; Scheduling of an Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on drawn stainless steel sinks (''DSSS'') from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 6, 2023.

FOR FURTHER INFORMATION CONTACT: (Alec Resch 202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 42745, July 3, 2023) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on January 3, 2024. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before January 11, 2024 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by January 11, 2024. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–25616 Filed 11–17–23; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the responses submitted on behalf of Elkay Manufacturing Company to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on September 26, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between May 14, 2023 and September 14, 2023 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 22, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 16, 2023 (88 FR 39479).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–25615 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ROS-Industrial Consortium-Americas

Notice is hereby given that, on August 29, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM International, West Conshohocken, PA; and Intrinsic Innovation LLC, Mountain View, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on June 15, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 23, 2023 (88 FR 57478).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–25611 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group H2ICE Demonstration Vehicle

Notice is hereby given that, on August 14, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group H2ICE Demonstration Vehicle (''H2ICE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Afton Chemical Corporation, Richmond, VA; ExxonMobil Technology and Engineering Company, Spring, TX;

Hyundai Doosan Infracore, Incheon, KOREA; Robert Bosch LLC, Farmington Hills, MI; Shell Global Solutions (US) Inc., Houston, TX; MAHLE GmbH, Stuttgart, GERMANY; ARAMCO Services Company, Houston, TX; MECA, Arlington, VA; and Caterpillar Inc., Irving, TX. The general area of H2ICE's planned activity is to build a Class 8 Near-Zero-Emissions 2 demonstration vehicle powered by a hydrogen-fuel internal combustion engine. The primary objective of the project is to demonstrate a near-term pathway toward elimination of greenhouse gas tailpipe emissions for heavy-duty applications where battery and fuel-cell technologies are not sufficiently mature for widescale adoption. In addition to near-zero CO2 tailpipe emissions, the vehicle will also demonstrate 0.02 g/hp-hr NO_X emissions utilizing current Low- NO_X aftertreatment technology.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–25612 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on September 6, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Battery Innovation (''CBI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Batt-tek Consulting, Johnson City, TN; GS Yuasa Energy Solutions, Roswell, GA; NV Bekaerts, Zwevegem, BELGIUM; Solveteq Ltd, Worthing West Sussex, UNITED KINGDOM; and Trafigura Pte Ltd, Geneva, SWITZERLAND, have been added as parties to this venture.

Also, Black Diamond, Austin, TX; and Owens Corning, Apeldoorn, NETHERLANDS, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CBI intends to file additional written notifications disclosing all changes in membership.

On May 24, 2019, CBI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2019 (84 FR 29241).

The last notification was filed with the Department on February 23, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18184).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–25614 Filed 11–17–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On November 8, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and the State of Indiana* v. *Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC,* Case No. 23–381 (N.D. Ind.).

The Complaint seeks compensation for natural resource damages relating to a steel manufacturing and finishing facility in Burns Harbor, Indiana, owned and operated by Cleveland-Cliffs Burns Harbor LLC and its corporate parent Cleveland-Cliffs Steel LLC (collectively, ''Cleveland-Cliffs''). The Complaint alleges that Cleveland-Cliffs released cyanide and ammonia into the East Branch of the Little Calumet River during an August 2019 incident, which led to beach closures, a fish kill, and other natural resource damages recoverable under the Comprehensive Environmental Response, Compensation and Liability Act. Under the Consent Decree, Cleveland-Cliffs would be required to provide compensation for the natural resource damages. In particular, the Consent Decree requires: (1) the donation and conservation of two approximately one-acre parcels of land bordering the East Branch of the Little Calumet River and near the Indiana Dunes National Park; (2) payment of $409,533 to the DOI Natural Resource Damage Assessment and Restoration Fund; and (3) payment of $590,173 to the governments for reimbursement of natural resource damages assessment costs.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Indiana* v. *Cleveland-Cliffs Burns Harbor LLC and Cleveland-Cliffs Steel LLC,* D.J. Ref. No. 90–5–1–1–12268/2. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–25570 Filed 11–17–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0009]

NASA Neutral Buoyancy Laboratory Operations Contract; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of NASA's

Neutral Buoyancy Laboratory Operations Contract (NOC or ''the applicants'') for a permanent variance and interim order from a provision of the OSHA standard that regulates commercial diving operations, presents the agency's preliminary finding on NOC's application, and announces the granting of an interim order. NOC is a team of contractors consisting of Vertex TTS, Oceaneering International Inc. (Oll), Bastion Technologies Inc., Rothe Enterprises, Rothe Development, International Preparedness Associates Inc. (IPA), MRI, and EPro. NOC's variance request is based on the conditions specified in the alternate standard that OSHA granted to the National Aeronautics and Space Administration (NASA) on June 30, 2021. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicants a permanent variance based on the conditions specified in this notice.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before December 20, 2023. The interim order specified by this notice becomes effective on November 20, 2023 and shall remain in effect until it is modified or revoked, or until OSHA publishes a decision on the permanent variance application, whichever occurs first.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2023–0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket (including this *Federal Register* notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627 for assistance in locating docket submission.

Extension of comment period: Submit requests for an extension of the comment period on or before December 20, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2300; email: *robinson.kevin@dol.gov.*

Copies of this Federal Register notice: Electronic copies of this *Federal Register* notice are available at *https://www.regulations.gov.* This *Federal Register* notice, as well as news releases and other relevant information, also are available at OSHA's web page at *https://www.osha.gov.*

Hearing Requests: According to 29 CFR 1905.15, hearing requests must include: (1) a short and plain statement detailing how the proposed variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

OSHA's standard in subpart T of 29 CFR part1910 governs commercial diving operations. On April 6, 2022, the eight companies comprising NASA's Neutral Buoyancy Laboratory Operations Contract (collectively NOC or the applicants) submitted an application for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and 29 CFR 1905.11 (Variances and other relief under section 6(d)), from a provision of OSHA's commercial diving operations (CDO) standard that regulates the use of decompression chambers (Docket No. OSHA–2023–0009–0001). NOC's application also requested an interim order pending OSHA's decision on the variance application. NOC is located at 13000 Space Center Boulevard, Houston, Texas, 77059.

Specifically, NOC seeks a permanent variance and interim order from the provision of OSHA's CDO standard at 29 CFR 1910.423(b)(2) that requires the employer to instruct divers engaged in commercial diving operations to remain awake and in the vicinity of the decompression chamber at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) for any dive outside the no-decompression limits, deeper than 100 feet of sea water (fsw), or using mixed gas as a breathing mixture.

NOC is a team of contractors for the NASA, a federal government agency that is responsible for science and technology related to air and space. NOC is comprised of prime contractor Vertex TTS and sub-contractors Oceaneering International Inc. (Oll), Bastion Technologies Inc., Rothe Enterprises, Rothe Development, International Preparedness Associates Inc. (IPA), MRI and EPro; a group of companies working at NASA's Neutral Buoyancy Laboratory, within the NASA Space Center in Houston, Texas. On June 30, 2021, OSHA granted NASA an alternate standard [1] regulating its use of decompression chambers during diving operations at NASA's National Buoyancy Laboratory (NBL) (Docket No. OSHA–2023–0009–0002), OSHA's Comments and Decisions to NASA's Request for an Alternate Standard on Diving (NASA Alternate Diving Standard). To account for technological advances in the use of elevated oxygen levels in nitrox breathing-gas mixtures and the use of the equivalent-air-depth (EAD) formula (see OSHA's 2004 Final Rule amending 29 CFR part 1910, subpart T, appendix C (69 FR 7351, 7356)), the NASA alternate standard provides NASA with modified

[1] Federal agency heads may seek and obtain approval for alternate standards from OSHA pursuant to 29 CFR 1960.17. An alternate standard may only be approved upon a showing that the alternate standard will provide equivalent or greater protection for the affected employees than compliance with the OSHA standard.

requirements regarding the use of decompression chambers, including requiring the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

NOC's divers conduct diving operations for NASA at the NBL facility in Houston, Texas. NASA requires all divers to follow all of their internal requirements, including the NBL Diving Program and the NASA alternate standard, which only covers NASA employees. To permit NOC's divers to dive under the same standards as their NASA-employed colleagues, NOC seeks the interim order and permanent variance from 29 CFR 1910.423(b)(2) based on the same conditions that apply to NASA divers under the NASA alternate standard.

NOC contends that the proposed variance conditions outlined in their application provide NOC's workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's CDO standard. NOC also certified that it is not contesting any citations involving the standards that are the subject of this application.

Based on an initial review of NOC's application for a permanent variance and interim order based on the alternate standard OSHA granted NASA on June 30, 2021, OSHA has preliminarily determined that granting a variance allowing NOC to use the NASA alternate standard would provide a workplace for NOC's employees that is as safe and healthful as that provided by the OSHA standard.

Pursuant to the requirements of OSHA's variance regulations (29 CFR 1905.11), the applicants have certified that they notified their workers of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicants informed their workers of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

II. NASA's Alternate Diving Standard and NOC's Variance Application

A. Background

On December 15, 2020, NASA submitted an application to OSHA proposing one alternate standard to 29 CFR 1910.423(b)(2), subpart T, and included with their application extensive introductory, background, and explanatory information in support of the application (Docket No. OSHA–2023–0009–0003). NASA sought an alternate standard that would permit the NBL to conduct post-dive health monitoring that is tailored to NASA's specific dive operations and medical surveillance capabilities.

The alternate standard application stated that NASA operates training and simulation activities for space operations that routinely involve underwater diving operations in preparation for upcoming missions. NASA described the NBL as a large, indoor tank of water, where astronauts perform simulated extravehicular activities (EVAs), also known as spacewalks, in preparation for upcoming space missions. The NBL is a controlled environment with a maximum depth of 40 feet. Its primary purpose is to provide a large-scale underwater environment in which NASA personnel can simulate a weightless environment by balancing the buoyancy of a suited subject submerged in the water. Astronaut trainees, suited in Extravehicular Mobility Units (EMUs) adapted for use in water, can then perform a variety of specialized activities on spacecraft and Space Station analogs in the water. The NBL uses nitrox (46% enriched air nitrox (EAN_{46})) as the standard breathing gas for self-contained underwater breathing apparatus (SCUBA) while working in the tank. NASA asserted in its request for the alternate standard that diving on nitrox in the NBL is safer and less likely to cause decompression sickness (DCS) than diving on compressed air due to the lower partial pressure of nitrogen in the gas mixture, giving a shallower ''equivalent air depth'' (EAD). The EAD formula can accurately estimate the depth allowing for DCS risk calculation based on equivalent nitrogen pressures and dive durations used in air diving. In other words, breathing EAN_{46} at 40 feet is like breathing air at 17 feet, essentially eliminating the risk of DCS in nominal operations. Additionally, the alternate standard application examined the use of nitrox in the water, and the risk of oxygen toxicity, specifically the risk of seizure resulting from Central Nervous System (CNS) oxygen toxicity. NASA asserted in the alternate standard application that with the hard floor at 40 feet in the tank, there are no cases in medical or diving literature of seizure in water at pressures of PO_2 of 1.0 ata. Further, NASA asserted that there have been no instances of CNS oxygen toxicity with NBL operations to date.

The alternate standard application asserted that the alternate standard provides equivalent protection to the OSHA standard. First, the fixed diving depth of the pool has mitigated the risk of decompression sickness. As a result, the NBL has eliminated the risk of decompression sickness and thus the need to remain within the vicinity of the chamber is for the control and treatment of arterial gas embolism only. Second, NASA asserted that a shorter observation period would be sufficient: ''At the NBL, a ten-minute observation provides the equivalent protection as a one-hour observation in the outside environment. Moreover, implementation of this standard will provide greater protection for divers by allowing them to dive on Nitrox rather than air routinely. This will reduce recurrent decompression stress experienced by the divers, along with the resulting long-term health problems that occur from repetitive decompression stress, such as the risk of dysbaric osteonecrosis (bone death).'' Additionally: ''NBL divers operate under no-decompression limits that are more conservative than the U.S. Navy. The OSHA regulations for mixed gas diving enhance safety when applied to gas mixtures used on long, deep, complex dives because of increased risk of DCS and oxygen toxicity. However, diving with nitrox at shallower depths, such as the NBL, is in fact safer than diving on air.'' Further: ''The NBL adheres to strict oxygen clean handling and compatibility requirements that exceed the industry standard for concentrations greater than 40% by volume. The alternate standard allows a safer gas to be breathed during all NBL events, in addition to allowing for fewer total diving events.''

NASA's alternate standard application also explained that NASA employees working within the NBL work together to ensure that qualified personnel and certified systems are available to meet NASA's EVA requirements. NASA stated that safety and utility divers support suited trainees at all times in the water. Suited crew utilize surface-supplied nitrox via an umbilical, and support divers breathe nitrox via self-contained underwater breathing apparatus (SCUBA) while working in the tank. NBL activities routinely involve dozens of trainees and divers, requiring hundreds of dive hours per week. NASA asserted in the alternate standard application that all divers are physically examined by the NBL medial officer or a human test support group medical technician for fitness prior to entering the water. Suited subjects have their fitness to dive exam performed by the medical officer

only. This exam includes vital signs and changes to medical history, including but not limited to, medications, physical fitness, as well as cardiopulmonary and ear, nose and throat examinations. Divers and suited subjects may be disqualified if there are any concerning abnormalities, pending treatment or further evaluation and management. NASA also certified that the application of the alternate standard will only apply to the NBL and will not be used during the other underwater activities that NASA performs.

After fully considering NASA's application and its responses to OSHA's follow-up questions (Docket No. OSHA–2023–0009–0004), OSHA granted the alternate standard that NASA proposed for use solely at NASA's NBL (Docket No. OSHA–2023–0009–0005). NOC now seeks an interim order and permanent variance based on the alternate standard that OSHA granted to NASA covering their employees conducting commercial diving operations at the NBL.

As a NASA contractor, NOC asserts that their divers must strictly follow the requirements of the NBL, which include following the conditions of the NASA alternate standard. However, the NASA alternate standard's coverage does not include NOC-employed divers, even though they work side-by-side with NASA-employed divers during NBL operations. NOC states that their divers undergo the same training as NASA NBL employees, and that there are no differences between NASA and NOC divers regarding medical clearance procedures and standards, training materials, equipment used, equipment maintenance, and diving procedures used. Accordingly, NOC seeks permission from OSHA to conducts dive activities for NASA at the NBL under the same standard regulating the time required for NASA employees diving at the NBL, on nitrox and within the no-decompression limits, pursuant to the NASA alternate standard rather than the requirements of 29 CFR 1910.432(b)(2).

B. Requested Variance From 29 CFR 1910.423(b)(2), Requirements for Decompression Chambers [2]

OSHA's standards regulating the availability and use of decompression chambers require that for any dive outside the no-decompression limits, deeper than 100 fsw, or using mixed gas as a breathing mixture, the employer must instruct the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) (29 CFR 1910.423(b)(2)).

In adopting the conditions of the NASA alternate standard, NOC's application proposes deviating from the decompression chamber availability and capability requirements in OSHA's CDO standard. As OSHA explained when it granted the NASA Alternate Diving Standard, the purpose of having a decompression chamber available and ready for use at a dive site is to treat DCS and arterial gas embolism (AGE). DCS may occur from breathing air or mixed gases at diving depths and durations that require decompression, while AGE may result from over-pressurizing the lungs, usually following a rapid ascent to the surface without proper exhalation. If DCS or AGE develops, a decompression chamber, oxygen or treatment gas mixtures, and treatment tables and instructions must be readily available to treat these conditions effectively. Decompression chambers provide the most effective therapy—recompression—for DCS and AGE.

NOC's proposed variance would adopt the conditions of the NASA alternate standard that permits NASA to deviate from the requirement that the employer instruct all divers who dive deeper than 100 fsw or who dive using mixed breathing gas to remain awake and in the vicinity of a decompression chamber for one hour after the dive. The NASA alternate standard allows divers at NASA's NBL who are diving on nitrox, within the no decompression limits, to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive. In other words, the NASA alternate Section 1910.423(b)(2) requires that any NASA diver at NASA's NBL who dives using nitrox within the no-decompression limits will be instructed to remain awake and in the vicinity of the decompression chamber for at least ten minutes after the completion of the dive.

When granting NASA an alternate standard to 29 CFR 1910.423(b)(2), OSHA explained that the CDO standard sets the 100 fsw limit based on the increased risk of developing DCS and AGE on dives deeper than 100 fsw. However, OSHA explained that the agency amended the CDO standard in 2004 to permit employers of recreational diving instructors and diving guides to comply with an alternative set of decompression chamber requirements (see 69 FR 7351 (February 17, 2004)).[3] Under the conditions articulated in appendix C to subpart T, eligible employers are not required to provide a decompression chamber at the dive site when engaged in SCUBA diving to 130 fsw while breathing a nitrox gas mixture within the no-decompression limits.

OSHA explained in the NASA alternate standard that it created this exemption because the agency determined that the elevated levels of oxygen in nitrox breathing-gas mixtures reduced the incidence of DCS compared to breathing air at the same depths, and therefore found that the risk of DCS was minimal.

After considering the statistics and information regarding NBL operations that NASA submitted, OSHA concluded that NASA's proposed alternate standard would provide equivalent protection to the CDO standard when NBL divers use nitrox breathing-gas mixtures. NOC's proposed variance would adopt the identical conditions as the alternate standard to 29 CFR 1910.423(b)(2) that OSHA granted to NASA.

Based on the technical review of NOC's application, the NASA alternate standard, and related supporting material, OSHA preliminarily finds that the proposed conditions would provide NOC's divers with protection equivalent to the CDO standard; there are no differences in the training requirements, medical clearance procedures and standards, equipment use and maintenance requirements, or diving procedures that apply to NASA-employed and NOC-employed divers who dive at the NBL; diver safety is best promoted where diving safety rules are clear and consistently applicable to all divers at a worksite. For these reasons, OSHA believes that diving safety for the NBL will be maximized when the diving practices of NOC-employed divers are identical to those of NASA-employed divers. Accordingly, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to NOC on those same conditions.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives, OSHA has preliminarily determined that the applicants' proposed alternatives on the whole, subject to the conditions in the request and imposed by this interim order,

[2] A decompression chamber is ''a pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system used to decompress divers and to treat decompression sickness'' (29 CFR 1910.402).

[3] Appendix C incorporated into the CDO standard essentially the same terms as those used in a variance that OSHA granted to Dixie Divers, Inc., a diving school that employed several recreational diving instructors, in 1999 (see 64 FR 71242, December 20, 1999).

provide measures that are as safe and healthful as those required by the cited OSHA standard addressed in section II of this document.

In addition, OSHA has preliminarily determined that the following alternative is at least as effective as the specified OSHA requirement.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the decision to grant an interim order allowing NOC's employees to perform diving operations at NASA's NBL, subject to the conditions that follow in this document. This interim order will remain in effect until the agency modifies or revokes the interim order or makes a decision on NOC's application for a permanent variance. During the period starting with the publication of this notice or until the agency modifies or revokes the interim order or makes a decision on its application for a permanent variance, the applicants are required to comply fully with the conditions of the interim order as an alternative to complying with the following requirement of 29 CFR 1910.424(b)(2) as identified in the NASA alternate standard (the alternate standard) that:

> Requires divers at NASA's Neutral Buoyancy Laboratory, in Houston, Texas, conducting dives using nitrox, within the no-decompression limits, to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

As described earlier in this notice, NOC proposes to adopt the conditions of the NASA alternate standard, which OSHA granted to NASA on June 30, 2021, as the conditions of the interim order and permanent variance. In addition to adopting the NASA alternate standard's conditions for deviating from the decompression chamber provisions of subpart T, OSHA has added several conditions, which the agency believes are necessary to ensure the safety of NOC's divers who conduct commercial diving operations for NASA at the NBL.

After a comprehensive review of the record, the agency preliminarily finds that adherence to the conditions of the proposed variance would provide the applicants' workers with a workplace that will be at least as safe and healthful as if the applicants complied with the requirements of 29 CFR 1910.423(b)(2). After reviewing all available information, including NOC's variance application, NASA's application for the alternate diving standard, and OSHA's analysis and subsequent granting of the NASA alternate standard, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to NOC on those same conditions.

In order to avail itself of the interim order, NOC must: (1) comply with the conditions listed in the interim order for the period starting with the grant of the interim order until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance; (2) comply fully with all other applicable provisions of 29 CFR part 1910 and subpart T; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of their application for a permanent variance.

OSHA is also proposing that the same requirements (see above section II, part B) would apply to a permanent variance if OSHA ultimately issues one. OSHA requests comment on the preliminary determination that the specified alternative and conditions would provide a workplace as safe and healthful as those required by the standard from which the variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Description of the Conditions Specified by the Interim Order and the Proposed Permanent Variance

This section describes the alternative means of compliance with the provisions of 29 CFR 1910.423(b)(2) and provides additional detail regarding the proposed conditions that form the basis of NOC's application for an interim order and permanent variance. As indicated earlier in this notice, NOC seeks the interim order and permanent variance based on proposed conditions derived from the conditions of the alternate standard that OSHA granted to NASA on June 30, 2021 (Docket No. OSHA–2023–0009–0002). The below-described conditions form the basis of the interim order and the requested permanent variance.[4]

Proposed Condition A: Scope

The scope of the proposed permanent variance would limit coverage only to the commercial diving operations performed at NASA's NBL. Clearly defining the scope of the proposed permanent variance provides NOC, NOC's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that NOC exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers)[5] may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated in the application. In this instance, if OSHA were to grant a permanent variance, it would apply to only the applicants who comprise the NOC (Vertex TTS, Oll, Bastion Technologies Inc., Rothe Enterprises, Rothe Development, IPA, MRI, and EPro), and only to work at NASA's Neutral Buoyancy Laboratory. As a result, it is important to understand that if OSHA were to grant NOC a permanent variance, it would not apply to any other employers. Additionally, coverage is limited to the work situations specified under the ''Scope and Application'' section of subpart T, Commercial Diving Operations (1910.401(a)), and would not apply to commercial diving operations that are already exempted under 1910.401(a)(2).[6] Accordingly the scope specifies that the interim order and proposed variance will only apply to dives occurring at NASA's Neutral Buoyancy Laboratory and within OSHA's geographical authority. When implementing the conditions of the proposed permanent variance, NOC would have to comply fully with all safety and health provisions that are applicable to commercial diving

[4] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a permanent variance but the conditions are mandatory for purposes of the interim order.

[5] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

[6] Section 1910.401(a)(2) provides that the CDO standard does not apply to any dive (i) performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits; (ii) performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; (iii) governed by 45 CFR part 46 (Protection of Human Subjects, U.S. Department of Health and Human Services) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects; or (iv) fitting the standard's definition of ''scientific diving.''

operations as specified by 29 CFR part 1910, subpart T, except for the requirements specified by 29 CFR 1910.423(b)(2).

The interim order only applies to NOC's employees when they conduct diving operations at NASA's Neutral Buoyancy Laboratory, as would the permanent variance should OSHA decide to grant it.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance.

Proposed Condition C: List of Abbreviations

Proposed condition C defines several abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicants' and their employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: Requirements for Decompression Chambers

This proposed condition requires that, for any dive that is within the no-decompression limits and using nitrox as a breathing mixture, NOC will instruct the diver to remain awake and in the vicinity of the decompression chamber which is at the dive location for at least ten minutes after the dive (including decompression or treatment as appropriate). When using a nitrox breathing-gas mixture, NOC will be required to meet the no-decompression provisions of appendix C to the CDO rule (''Use of No-Decompression Limits'').

Proposed Condition E: Communication

This proposed condition requires the applicants to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicants to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

Proposed Condition F: Worker Qualification and Training

This proposed condition requires NOC's employees to follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual as well as any instruction provided by NASA's Dive Safety Board (NSB) to qualify their employees to perform diving activities at the NBL. Further, NOC must ensure that all employees conducting dives at the NBL are physically examined by the NBL medical officer of the day or a human test support group medical technician for fitness to dive prior to entering the water. The proposed condition specifies actions an affected worker must be able to perform safely during diving activities, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing the required dive tasks ensures that they recognize and respond appropriately to underwater safety and health hazards. These qualification and training requirements enable NOC divers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Proposed Condition G: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, NOC must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses. The applicants did not seek a variance from this standard and therefore must comply fully with those requirements.

Proposed Condition H: Notifications

Proposed Condition H adds additional reporting responsibilities, beyond those already required by the OSHA standard. The applicants would be required to maintain records of specific factors associated with each dive. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition I (using OSHA Form 301 Injury and Illness Incident Report to investigate and record dive-related recordable injuries as defined by 29 CFR 1904.4, 1904.7, and 1904.8 through 1904.12), would enable the applicants and OSHA to assess the effectiveness of the interim order and proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.[7]

Under the proposed condition, the applicants are required, within specified periods of time, to notify OSHA of: (1) any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of NBL dive-related operations within eight (8) hours of the incident ; (2) provide OTPCA and the Houston South Texas Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA Form 301 Injury and Illness Incident Report); (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OTPCA and the Houston South Texas OSHA Area Office within 15 working days should the applicants revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance; and (6) provide OTPCA and the Houston South Texas OSHA Area Office, by the fifteenth (15th) of January, at the beginning of each new calendar year, a report summarizing the dives completed during the year just ended and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and Illness Incident Report within seven (7) calendar days of the incident

[7] See 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses (*https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*https://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); and updates to OSHA's recordkeeping rule, 79 FR 56130, September 18, 2014 (more information available at: *(https://www.osha.gov/recordkeeping2014/index.html).*

(1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing injuries and illnesses, and the applicants' identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicants, their employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicants' workers and based on this assessment, whether to revise or revoke the conditions of the proposed permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicants to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicants to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to another company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicants regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicants are required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

VI. Specific Conditions of the Interim Order and the Proposed Permanent Variance

After comprehensively reviewing the evidence, OSHA has preliminarily determined that the proposed conditions will provide a place of employment as safe and healthful as that provided by 1910.424(b)(2). The following conditions apply to the interim order that OSHA is granting to NOC. In addition, these conditions specify the alternative means of compliance that OSHA proposes for NOC's requested permanent variance from the above-listed provision of subpart T of 29 CFR part 1910.

The conditions would apply with respect to all employees of NOC participating in diving operations as part of NASA's NBL. These conditions are outlined in this Section:

A. Scope

The interim order applies, and the permanent variance would apply only to NOC's diving operations conducted for NASA and performed at NASA's NBL; and

Performed in compliance with all applicable conditions of subpart T of 29 CFR part 1910 except for the requirement specified by 29 CFR 1910.423(b)(2) when conducting commercial diving operations.

B. Duration

The interim order granted to NOC will remain in effect until OSHA modifies or revokes this interim order or grants NOC's request for a permanent variance in accordance with 29 CFR 1905.13, whichever comes first.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

ATA—Atmosphere Absolute
BCD—Buoyancy Compensator Device
CDO—Commercial Diving Operations
CFR—Code of Federal Regulations
DCS—Decompression Sickness
DSB—Dive Safety Board
EAD—Equivalent Air Depth
EAN_X—Enriched Air Nitrox (where X denotes percentage of oxygen)
EVA—Extravehicular Activities
fsw – feet of seawater
NBL—NASA Neutral Buoyancy Laboratory
NOC—NASA's Neutral Buoyancy Laboratory Operations Contract
OSHA—Occupational Safety and Health Administration
OTPCA— OSHA's Office of Technical Programs and Coordination Activities
PO_2—Partial Pressure of Oxygen in ATA
SCUBA—Self-Contained Underwater Breathing Apparatus

D. Requirements for Decompression Chambers

For any dive at the NBL that is within the no-decompression limits and using nitrox as a breathing mixture, NOC would instruct the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least ten (10) minutes after the dive (including decompression or treatment as appropriate).

E. Communication

This proposed condition requires the applicants to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicants to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

F. Worker Qualification and Training

NOC would be required to:

1. Follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual, as well as any instruction provided by NASA's DSB;

2. Ensure that prior to entering the water, all NOC employees conducting dives at the NBL are physically examined for fitness to dive by the NBL medical officer of the day or a human test support group medical technician.

G. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, NOC would have to:

1. Maintain records of recordable injuries that occur as a result of diving operations conducted for NASA under the NBL;

2. Ensure that the information gathered and recorded under this provision, in concert with the information provided under proposed condition G (using OSHA Form 301 Incident Report Form) to investigate and record dive-related recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8 through 1904.12)), would enable NOC and OSHA to determine the effectiveness of the proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.

H. Notifications

NOC would be required to:

1. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Houston South Texas OSHA Area Office of any recordable injuries, illnesses, in-patient

hospitalizations, amputations, loss of an eye, or fatality that occur as a result of diving operations within eight (8) hours of the incident;

2. Provide OTPCA and the Houston South Texas OSHA Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA 301 form);

3. Include on the OSHA 301 form information on the diving conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented;

4. Provide their certification that they informed affected divers of the incident and the results of the incident investigation;

5. Notify OTPCA and the Houston South Texas OSHA Area Office within fifteen (15) working days should the applicants need to revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance;

6. Obtain OSHA's written approval prior to implementing the revision in their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions in the proposed permanent variance;

7. By the fifteenth (15th) of January, at the beginning of each new calendar year, provide OTPCA, and Houston South Texas OSHA Area Office, with a report summarizing the dives completed during the previous year and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents;

8. Notify OSHA if it ceases to do business, has a new address or location for their main office, or transfers the operations covered by the proposed permanent variance to a successor company; and

9. Ensure that OSHA would approve the transfer of the interim order or permanent variance to another company.

OSHA will publish a copy of this notice in the **Federal Register**.

VII. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–25566 Filed 11–17–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0010]

KBR Wyle Services, LLC; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of KBR Wyle Services, LLC for a permanent variance and interim order from a provision of the OSHA standard that regulates commercial diving operations, presents the agency's preliminary finding on KBR's application, and announces the granting of an interim order. KBR's variance request is based on the conditions specified in the alternate standard that OSHA granted to the National Aeronautics and Space Administration (NASA) on June 30, 2021. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this notice.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before December 20, 2023. The interim order specified by this notice becomes effective on November 20, 2023 and shall remain in effect until it is modified or revoked, or until OSHA publishes a decision on the permanent variance application, whichever occurs first.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2022–0010). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627 for assistance in locating docket submission.

Extension of comment period: Submit requests for an extension of the comment period on or before December 20, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2300; email: *robinson.kevin@dol.gov.*

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

Hearing Requests: Pursuant to 29 CFR 1905.15, hearing requests must include: (1) a short and plain statement detailing how the proposed variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

OSHA's standards in subpart T of 29 CFR 1910 govern commercial diving operations. On June 20, 2022, KBR Wyle Services, LLC (KBR or the applicant), submitted an application for a permanent variance under section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and 29 CFR 1905.11 (Variances and other relief under section 6(d)), from a provision of OSHA's commercial diving operations (CDO) standard that regulates the use of decompression chambers (Docket No. OSHA–2022–0010–0001). KBR's application also requested an interim order pending OSHA's decision on the variance application. KBR's corporate offices are located at 601 Jefferson Street, Houston, Texas 77002, and KBR identified an additional place of employment involved in the variance application: NASA's Neutral Buoyancy Laboratory, 13000 Space Center Boulevard, Houston, Texas 77059.

Specifically, KBR seeks a permanent variance and interim order from the provision of OSHA's CDO standard at 29 CFR 1910.423(b)(2) that requires the employer to instruct divers engaged in commercial diving operations to remain awake and in the vicinity of the decompression chamber at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) for any dive outside the no-decompression limits, deeper than 100 feet of sea water (fsw), or using mixed gas as a breathing mixture.

KBR is a contractor for the National Aeronautics and Space Administration (NASA), a federal government agency that is responsible for science and technology related to air and space. On June 30, 2021, OSHA granted NASA an alternate standard [1] regulating its use of decompression chambers during diving operations at NASA's National Buoyancy Laboratory (NBL) (Docket No. OSHA–2022–0010–0002), OSHA's Comments and Decisions to NASA's Request for an Alternate Standard on Diving (NASA Alternate Diving Standards). To account for technological advances in the use of elevated oxygen levels in nitrox breathing-gas mixtures and the use of the equivalent-air-depth (EAD) formula (see OSHA's 2004 Final Rule amending 29 CFR part 1910, subpart T, Appendix C (69 FR 7351, 7356)) the NASA Alternate Diving Standard provides NASA with modified requirements regarding the use of decompression chambers, including requiring the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

KBR's divers conduct diving operations for NASA at the NBL facility in Houston, Texas. NASA requires all divers to follow all of their internal requirements, including the NBL Diving Program and the NASA Alternate Diving Standard, which only covers NASA employees. To permit KBR's divers to dive under the same standards as their NASA-employed colleagues, KBR seeks the interim order and permanent variance from 29 CFR 1910.423(b)(2) based on the same conditions that apply to NASA divers under the NASA Alternate Diving Standard.

KBR contends that the proposed variance conditions outlined in their application provide KBR's workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's CDO standard. KBR also certified that it is not contesting any citations involving the standards that are the subject of this application.

Based on an initial review of KBR's application for a permanent variance and interim order based on the Alternate Standard OSHA granted NASA on June 30, 2021, OSHA has preliminarily determined that granting a variance allowing KBR to use the NASA Alternate Standard would provide a workplace for KBR employees that is as safe and healthful as that provided by the OSHA standard.

Pursuant to the requirements of OSHA's variance regulations (29 CFR 1905.11), the applicant has certified that they notified their workers of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed their workers of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

II. NASA's Alternate Diving Standard and KBR's Variance Application

A. Background

On December 15, 2020, NASA submitted an application (Docket No. OSHA–2022–0010–0001) to OSHA proposing one alternate standard to 29 CFR 1910.423(b)(2), Subpart T, and included with their application extensive introductory, background, and explanatory information in support of the application (Docket No. OSHA–2022–0010–0003). NASA sought an alternate standard that would permit the NBL to conduct post-dive health monitoring that is tailored to NASA's specific dive operations and medical surveillance capabilities.

The alternate standard application stated that NASA operates training and simulation activities for space operations that routinely involve underwater diving operations in preparation of upcoming missions. NASA described the NBL as a large, indoor tank of water, where astronauts perform simulated extravehicular activities (EVAs), also known as spacewalks, in preparation for upcoming space missions. The NBL is a controlled environment with a maximum depth of 40 feet. Its primary purpose is to provide a large-scale underwater environment in which NASA personnel can simulate a weightless environment by balancing the buoyancy of a suited subject submerged in the water. Astronaut trainees, suited in Extravehicular Mobility Units (EMUs) adapted for use in water, can then perform a variety of specialized activities on spacecraft and Space Station analogs in the water. The NBL uses nitrox (46% enriched air nitrox ([EAN_{46}) as the standard breathing gas for self-contained underwater breathing apparatus (SCUBA) while working in the tank. NASA asserted in its request for the alternate standard that diving on nitrox in the NBL is safer and less likely to cause decompression sickness (DCS) than diving on compressed air due to the lower partial pressure of nitrogen in the gas mixture, giving a shallower ''equivalent air depth'' (EAD). The EAD formula can accurately estimate the depth allowing for DCS risk calculation based on equivalent nitrogen pressures and dive durations used in air diving. In other words, breathing 46% EAN_{46} at 40 feet is like breathing air at 17 feet, essentially eliminating the risk of DCS in nominal operations. Additionally, the alternate standard application examined the use of nitrox in the water, and the risk of oxygen toxicity, specifically the risk of seizure resulting from Central Nervous System (CNS) oxygen toxicity. NASA asserted in the alternate standard application that with the hard floor at 40 feet in the tank, there are no cases in medical or diving literature of seizure in water at pressures of $_pO_2$ of 1.0 ata. Further, NASA asserted that there have

[1] Federal agency heads may seek and obtain approval for alternate standards from OSHA pursuant to 29 CFR 1960.17. An alternate standard may only be approved upon a showing that the alternate standard will provide equivalent or greater protection for the affected employees than compliance with the OSHA standard.

been no instances of CNS oxygen toxicity with NBL operations to date.

The alternate standard application asserted that the alternate standard provides equivalent protection to the OSHA standard. First, the fixed diving depth of the pool has mitigated the risk of decompression sickness. As a result, the NBL has eliminated the risk of decompression sickness and thus the need to remain within the vicinity of the chamber is for the control and treatment of arterial gas embolism only. Second, NASA asserted that a shorter observation period would be sufficient: ''At the NBL, a ten-minute observation provides the equivalent protection as a one-hour observation in the outside environment. Moreover, implementation of this standard will provide greater protection for divers by allowing them to dive on Nitrox rather than air routinely. This will reduce recurrent decompression stress experienced by the divers, along with the resulting long-term health problems that occur from repetitive decompression stress, such as the risk of dysbaric osteonecrosis (bone death).'' Additionally: ''NBL divers operate under no-decompression limits that are more conservative than the U.S. Navy. The OSHA regulations for mixed gas diving enhance safety when applied to gas mixtures used on long, deep, complex dives because of increased risk of DCS and oxygen toxicity. However, diving with nitrox at shallower depths, such as the NBL, is in fact safer than diving on air.'' Further: ''The NBL adheres to strict oxygen clean handling and compatibility requirements that exceed the industry standard for concentrations greater than 40% by volume. The alternate standard allows a safer gas to be breathed during all NBL events, in addition to allowing for fewer total diving events.''

NASA's alternate standard application also explained that NASA employees working within the NBL work together to ensure that qualified personnel and certified systems are available to meet NASA's EVA requirements. NASA stated that safety and utility divers support suited trainees at all times in the water. Suited crew utilize surface-supplied nitrox via an umbilical, and support divers breath nitrox via self-contained underwater breathing apparatus (SCUBA) while working in the tank. NBL activities routinely involve dozens of trainees and divers, requiring hundreds of dive hours per week. NASA asserted in the alternate standard application that all divers are physically examined by the NBL medial officer or a human test support group medical technical for fitness prior to entering the water. Suited subjects have their fitness to dive exam performed by the medical officer only. This exam includes vital signs and changes to medical history, including but not limited to, medications, physical fitness, as well as cardiopulmonary and ear, nose and throat examinations. Divers and suited subjects may be disqualified, if there are any concerning abnormalities, pending treatment or further evaluation and management. NASA also certified that the application of the alternate standard will only apply to the NBL and will not be used during the other underwater activities that NASA performs.

After fully considering NASA's application and its responses to OSHA's follow-up questions (Docket No. OSHA–2022–0010–0004), OSHA granted the alternate standard that NASA proposed for use solely at NASA's NBL (Docket No. OSHA–2022–0010–0002). KBR now seeks an interim order and permanent variance based on the alternate standard that OSHA granted to NASA covering their employees conducting commercial diving operations at the NBL.

As a NASA contractor, KBR asserts that their divers must strictly follow the requirements of the NBL, which include following the conditions of the NASA Alternate Diving Standard. However, the NASA Alternate Diving Standard's coverage does not include KBR-employed divers, even though they work side-by-side with NASA-employed divers during NBL operations. KBR states that their divers undergo the same training as NASA NBL employees, and that there are no differences between NASA and KBR divers regarding medical clearance procedures and standards, training materials, equipment used, equipment maintenance, and diving procedures used. Accordingly, KBR seeks permission from OSHA to conduct diving activities for NASA at the NBL under the same standard regulating the time required for NASA employees, diving at the NBL, on nitrox and within the no-decompression limits, pursuant to the NASA Alternate Diving Standard at 29 CFR 1910.432(b)(2).

B. Requested Variance From 29 CFR 1910.423(b)(2), Requirements for Decompression Chambers [2]

OSHA's standards regulating the availability and use of decompression chambers require that: for any dive outside the no-decompression limits, deeper than 100 fsw, or using mixed gas as a breathing mixture, the employer must instruct the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive (including decompression or treatment as appropriate) (1910.423(b)(2)).

In adopting the conditions of the NASA Alternate Diving Standard, KBR's application proposes deviating from the decompression chamber availability and capability requirements in OSHA's CDO standard. As OSHA explained when it granted the NASA Alternate Diving Standard, the purpose of having a decompression chamber available and ready for use at a dive site is to treat DCS and arterial gas embolism (AGE). DCS may occur from breathing air or mixed gases at diving depths and durations that require decompression, while AGE may result from over-pressurizing the lungs, usually following a rapid ascent to the surface without proper exhalation. If DCS or AGE develops, a decompression chamber, oxygen or treatment gas mixtures, and treatment tables and instructions must be readily available to treat these conditions effectively. Decompression chambers provide the most effective therapy—recompression—for DCS and AGE.

KBR's proposed variance would adopt the conditions of the NASA Alternate Diving Standard that permits NASA to deviate from the requirement of 1910.423(b)(2) that the employer instruct all divers who dive deeper than 100 fsw or who dive using mixed breathing gas to remain awake and in the vicinity of a decompression chamber for one hour after the dive, by allowing divers at NASA's NBL who are diving on nitrox, within the no decompression limits, to be instructed to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive. In other words, alternate Section 1910.423(b)(2) requires that any NASA diver at NASA's NBL who dives using nitrox within the no decompression limits will be instructed to remain awake and in the vicinity of the decompression chamber for at least ten minutes after the completion of the dive.

When granting NASA an alternate standard to 1910.423(b)(2), OSHA explained that the CDO standard sets the 100 fsw limit based on the increased risk of developing DCS and AGE on dives deeper than 100 fsw. However, OSHA explained that the agency amended the CDO standard in 2004 to permit employers of recreational diving instructors and diving guides to comply with an alternative set of decompression

[2] A decompression chamber is ''a pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system used to decompress divers and to treat decompression sickness'' (29 CFR 1910.402).

chamber requirements (see 69 FR 7351 (February 17, 2004)).[3] Under the conditions articulated in Appendix C to Subpart T, eligible employers are not required to provide a decompression chamber at the dive site when engaged in SCUBA diving to 130 fsw while breathing a nitrox gas mixture within the no-decompression limits.

OSHA explained in the NASA Alternate Diving Standard that it created this exemption for diving guides because the agency determined that the elevated levels of oxygen in nitrox breathing-gas mixtures reduced the incidence of DCS compared to breathing air at the same depths, and therefore found that the risk of DCS was minimal.

After considering the statistics and information regarding NBL operations that NASA submitted, OSHA concluded that NASA's proposed alternate standard would provide equivalent protection to the CDO standard when NBL divers use nitrox breathing-gas mixtures. KBR's proposed variance would adopt the same conditions under which OSHA granted the alternate standard to 1910.423(b)(2) to NASA for NBL dives in which KBR divers participate.

Based on the technical review of KBR's application, the NASA Alternate Diving Standard, and related supporting material, OSHA preliminarily finds that the proposed conditions would provide KBR divers with protection equivalent to the CDO standard; there are no differences in the training requirements, medical clearance procedures and standards, equipment use and maintenance requirements, or diving procedures that apply to NASA-employed and KBR-employed divers who dive at the NBL; diver safety is best promoted where diving safety rules are clear and consistently applicable to all divers at a worksite. For these reasons, OSHA believes that diving safety for the NBL will be maximized when the diving practices of KBR-employed divers are identical to those of NASA-employed divers. Accordingly, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to KBR on those same conditions.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives, OSHA has preliminarily determined that the applicant's proposed alternative on the whole, subject to the conditions in the request and imposed by this interim order, provide measures that are as safe and healthful as those required by the OSHA standard addressed in section II of this document.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the decision to grant an interim order allowing KBR's employees to perform diving operations at NASA's NBL, subject to the conditions that follow in this document. This interim order will remain in effect until the agency modifies or revokes the interim order or makes a decision on KBR's application for a permanent variance. During the period starting with the publication of this notice or until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance, the applicant is required to comply fully with the conditions of the interim order as an alternative to complying with the requirement of 29 CFR 1910.424(b)(2), including the condition identified in the NASA Alternate Diving Standard that:

> Requires divers at NASA's Neutral Buoyancy Laboratory, in Houston, Texas, conducting dives using nitrox, within the no-decompression limits, to remain awake and in the vicinity of the decompression chamber at the dive location for at least 10 minutes after the dive.

As described earlier in this notice, KBR proposes to adopt the conditions of the NASA Alternate Diving Standard, which OSHA granted to NASA on June 30, 2021, as the conditions of the interim order and permanent variance. In addition to adopting the NASA Alternate Diving Standard's conditions for deviating from the decompression chamber provisions of Subpart T, OSHA has added several conditions, which the agency believes are necessary to ensure the safety of KBR's divers who conduct commercial diving operations for NASA at the NBL.

After comprehensive review of the record, the agency preliminarily finds that adherence to the conditions of the proposed variance would provide the applicant's workers with a workplace that will be at least as safe and healthful as if the applicant complied with the requirements of 29 CFR 1910.423(b)(2). After reviewing all available information, including KBR's variance application, NASA's application for the alternate diving standard, and OSHA's analysis and subsequent granting of the NASA alternate standard, OSHA has decided to grant the interim order and preliminarily determined to grant the permanent variance to KBR on those same conditions.

In order to avail itself of the interim order, KBR must: (1) comply with the conditions listed in the interim order for the period starting with the grant of the interim order until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance); (2) comply fully with all other applicable provisions of 29 CFR part 1910 and Subpart T; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of the application for a permanent variance.

OSHA is also proposing that the same requirements (see above section II, part B) would apply to a permanent variance if OSHA ultimately issues one. OSHA requests comment on the preliminary determination that the specified alternative and conditions would provide a workplace as safe and healthful as those required by the standard from which the variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Description of the Conditions Specified by the Interim Order and the Permanent Variance

This section describes the alternative means of compliance with the provisions of 1910.423(b)(2) and provides additional detail regarding the proposed conditions that form the basis of KBR's application for an interim order and permanent variance. As indicated earlier in this notice, KBR seeks the interim order and permanent variance based on proposed conditions derived from the conditions of the alternate standard that OSHA granted to NASA on June 30, 2021 (Docket No. OSHA–2022–0010–0002). The below-described conditions form the basis of the interim order and the requested permanent variance.[4]

Proposed Condition A: Scope

The scope of the proposed permanent variance would limit coverage only to the commercial diving operations performed at NASA's NBL. Clearly defining the scope of the proposed permanent variance provides KBR, KBR's employees, potential future

[3] Appendix C incorporated into the CDO standard essentially the same terms as those used in a variance that OSHA granted to Dixie Divers, Inc., a diving school that employed several recreational diving instructors, in 1999 (see 64 FR 71242, December 20, 1999).

[4] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a permanent variance but the conditions are mandatory for the purposes of the interim order.

applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that KBR exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers)[5] may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated in the application. In this instance, if OSHA were to grant a permanent variance, it would apply to only the applicant, KBR, and only to work at NASA's Neutral Buoyancy Laboratory. As a result, it is important to understand that if OSHA were to grant KBR a permanent variance, it would not apply to any other employers. Additionally, coverage is limited to the work situations specified under the ''Scope and Application'' section of Subpart T, Commercial Diving Operations (1910.401(a)), and would not apply to commercial diving operations that are already exempted under 1910.401(a)(2).[6] Accordingly the scope specifies that the interim order and proposed variance will only apply to dives occurring at NASA's Neutral Buoyancy Laboratory and within OSHA's geographical authority. When implementing the conditions of the proposed permanent variance, KBR would have to comply fully with all safety and health provisions that are applicable to commercial diving operations as specified by 29 CFR 1910, Subpart T, except for the requirements specified by 29 CFR 1910.423(b)(2).

The interim order only applies to KBR's employees when they conduct diving operations at NASA's Neutral Buoyancy Laboratory, as would the permanent variance should OSHA decide to grant it.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance.

Proposed Condition C: List of Abbreviations

Proposed condition C defines several abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant and their employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: Requirements for Decompression Chambers

This proposed condition requires that, for any dive that is within the no-decompression limits and using nitrox as a breathing mixture, KBR will instruct the diver to remain awake and in the vicinity of the decompression chamber which is at the dive location for at least ten minutes after the dive (including decompression or treatment as appropriate). When using a nitrox breathing-gas mixture, KBR will be required to meet the no-decompression provisions of Appendix C to the CDO rule (''Use of No-Decompression Limits'').

Proposed Condition E: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

Proposed Condition F: Worker Qualification and Training

This proposed condition requires KBR to follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual as well as any instruction provided by NASA's Dive Safety Board (NSB) to qualify their employees to perform diving activities at the NBL. Further, KBR must ensure that all employees conducting dives at the NBL are physically examined by the NBL medical officer of the day or a human test support group medical technician for fitness to dive prior to entering the water. The proposed condition specifies actions an affected worker must be able to perform safely during diving activities, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing the required dive tasks ensures that they recognize and respond appropriately to underwater safety and health hazards. These qualification and training requirements enable KBR divers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Proposed Condition G: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, KBR must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore must comply fully with those requirements.

Proposed Condition H: Notifications

Proposed Condition H adds additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant would be required to maintain records of specific factors associated with each diving activity. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition I (using OSHA Form 301 Injury and Illness Incident Report to investigate and record dive-related recordable injuries as defined by 29 CFR parts 1904.4, 1904.7, and 1904.8—1904.12), would enable the applicant and OSHA to assess the effectiveness of

[5] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

[6] Section 1910.401(a)(2) provides that the CDO standard does not apply to any dive (i) performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits; (ii) performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; (iii) governed by 45 CFR part 46 (Protection of Human Subjects, U.S. Department of Health and Human Services) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects; or (iv) fitting the standard's definition of ''scientific diving.''

the interim order and proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.[7]

Under the proposed condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of NBL dive-related operations within eight (8) hours of the incident; (2) provide OTPCA and the Houston South Texas Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA Form 301 Injury and Illness Incident Report); (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OTPCA and the Houston South Texas OSHA Area Office within 15 working days should the applicant revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance; and (6) provide OTPCA and the Houston South Texas OSHA Area Office, by the fifteenth (15th) of January, at the beginning of each new calendar year, a report summarizing the dives completed during the year just ended and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and Illness Incident Report within seven (7) calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related diving (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing injuries and illnesses, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, their employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and based on this assessment, whether to revise or revoke the conditions of the proposed permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to another company. In addition, the condition specifies that the transfer of the permanent variance to another company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to another company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

VI. Specific Conditions of the Interim Order and the Proposed Variance

After comprehensively reviewing the evidence, OSHA has preliminarily determined that the proposed conditions will provide a place of employment as safe and healthful as that provided by 1910.424(b)(2). The following conditions apply to the interim order that OSHA is granting to KBR. In addition, these conditions specify the alternative means of compliance that OSHA proposes for KBR's requested permanent variance from the above-listed provision of subpart T of 29 CFR part 1910.

The conditions would apply with respect to all employees of KBR participating in diving operations as part of NASA's NBL. These conditions are outlined in this Section:

A. Scope

The interim order applies, and the permanent variance would apply only to KBR's diving operations conducted for NASA and performed at NASA's NBL; and

Performed in compliance with all applicable conditions of subpart T of 29 CFR 1910 except for the requirement specified by 29 CFR 1910.423(b)(2) when conducting commercial diving operations.

B. Duration

The interim order granted to KBR will remain in effect until OSHA modifies or revokes this interim order or grants KBR's request for a permanent variance in accordance with 29 CFR 1905.13, whichever comes first.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

ATA—Atmosphere Absolute
BCD—Buoyancy Compensator Device
CDO—Commercial Diving Operations
CFR—Code of Federal Regulations
DCS—Decompression Sickness
DSB—Dive Safety Board
EAD—Equivalent Air Depth
EVA—Extravehicular Activities
fsw—feet of seawater
KBR—KBR Wyle Services, LLC
NBL—NASA Neutral Buoyancy Laboratory
OSHA—Occupational Safety and Health Administration
OTPCA—OSHA's Office of Technical Programs and Coordination Activities
SCUBA—Self-Contained Underwater Breathing Apparatus

D. Requirements for Decompression Chambers

For any dive at the NBL that is within the no-decompression limits and using nitrox as a breathing mixture, KBR would instruct the diver to remain awake and in the vicinity of the decompression chamber at the dive location for at least ten (10) minutes after the dive (including decompression or treatment as appropriate).

E. Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected

[7] See 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); and updates to OSHA's recordkeeping rule, 79 FR 56130, September 18, 2014 (more information available at: (*http://www.osha.gov/recordkeeping2014/index.html*).

workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during diving activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during diving activities at NASA's NBL.

F. Worker Qualification and Training

KBR would be required to:

1. Follow the requirements of the NASA NBL Safety Program, including the NBL Safe Practices Manual, as well as any instruction provided by NASA's DSB;

2. Ensure that prior to entering the water, all KBR employees conducting dives at the NBL have been physically examined for fitness to dive by the NBL medical officer of the day or a human test support group medical technician.

G. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, KBR would have to:

1. Maintain records of recordable injuries that occur as a result of diving operations conducted for NASA under the NBL;

2. Ensure that the information gathered and recorded under this provision, in concert with the information provided under proposed condition G (using OSHA Form 301 Incident Report Form) to investigate and record dive-related recordable injuries as defined by 29 CFR parts 1904.4, 1904.7, and 1904.8—1904.12, would enable KBR and OSHA to determine the effectiveness of the proposed permanent variance in preventing DCS and other dive-related injuries and illnesses.

H. Notifications

KBR would be required to:

1. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Houston South Texas OSHA Area Office of any recordable injuries, illnesses, in-patient hospitalizations, amputations, loss of an eye, or fatality that occur as a result of diving operations within eight (8) hours of the incident;

2. Provide OTPCA and the Houston South Texas OSHA Area Office within twenty-four (24) hours of the incident with a copy of the incident investigation report (using OSHA 301 form);

3. Include on the OSHA 301 form information on the diving conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented;

4. Provide their certification that they informed affected divers of the incident and the results of the incident investigation;

5. Notify OTPCA and the Houston South Texas OSHA Area Office within fifteen (15) working days should the applicant need to revise their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions of the proposed permanent variance;

6. Obtain OSHA's written approval prior to implementing the revision in their dive procedures to accommodate changes in their diving operations that affect their ability to comply with the conditions in the proposed permanent variance;

7. By the fifteenth (15th) of January, at the beginning of each new calendar year, provide OTPCA, and Houston South Texas OSHA Area Office, with a report summarizing the dives completed during the previous year and evaluating the effectiveness of the variance conditions in providing a safe and healthful work environment and in preventing dive-related incidents;

8. Notify OSHA if it ceases to do business, has a new address or location for their main office, or transfers the operations covered by the proposed permanent variance to a successor company; and

9. Ensure that OSHA would approve the transfer of the interim order or permanent variance to a successor company.

OSHA will publish a copy of this notice in the **Federal Register**.

VII. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–25567 Filed 11–17–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Pro Bono Innovation Fund Process for Submitting Pre-Applications for 2024 Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions for submitting a Pre-Application for 2024 Pro Bono Innovation Fund grants.

DATES: Pre-applications must be submitted by 11:59 p.m. EST on Monday, January 16, 2024.

ADDRESSES: Letters of Intent must be submitted electronically at *http://lscgrants.lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Harris, Special Grant Program Coordinator, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1572 or *harrisk@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 2014, Congress has provided an annual appropriation to LSC ''for a Pro Bono Innovation Fund.'' *See, e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4553 (2022). LSC requested these funds for grants to ''develop, test, and replicate innovative pro bono efforts that can enable LSC grantees to expand clients' access to high quality legal assistance.'' LSC Budget Request, Fiscal Year 2014 at 26 (2013). The grants must involve innovations that are either ''new ideas'' or ''new applications of existing best practices.'' *Id.* Each grant would ''either serve as a model for other legal services providers to follow or effectively replicate a prior innovation. *Id.* The Senate Appropriations Committee explained that these funds ''will support innovative projects that promote and enhance pro bono initiatives throughout the Nation,'' and the House Appropriations Committee directed LSC ''to increase the involvement of private attorneys in the delivery of legal services to [LSC-eligible] clients.'' Senate Report 114–239 at 123 (2016), House Report 113–448 at 85 (2014).

Since its inception, the Pro Bono Innovation Fund has advanced LSC's goal of increasing the quantity and quality of legal services by funding projects that more efficiently and effectively involve pro bono volunteers in serving the critical unmet legal needs of LSC-eligible clients. In 2017, LSC built on these successes by creating three funding categories to better focus

on innovations serving unmet and well-defined client needs (Project Grants), on building comprehensive and effective pro bono programs through new applications of existing best practices (Transformation Grants), and on providing continued development support for the most promising innovations (Sustainability Grants). In 2021, LSC created Non-Direct Service Project Grants to fund organizations to develop and implement innovative solutions to pro bono challenges that do not involve providing direct legal services to clients. In 2022, LSC created a new funding category to provide organizations with resources to plan and establish a strong foundation (Planning Grants). Planning Grants will be available to all eligible applicants in the 2024 funding cycle.

II. Funding Opportunities Information

A. Eligible Applicants

To be eligible for the Pro Bono Innovation Fund's Project, Sustainability, and Transformation grants, Applicants must be current grantees of LSC Basic Field-General, Basic Field-Migrant, or Basic Field-Native American grants. To qualify for a Sustainability Grant, Applicants must also have a 2022 Pro Bono Innovation Fund Project Grant.

B. Pro Bono Innovation Fund Purpose and Key Goals

Pro Bono Innovation Fund grants develop, test, and replicate innovative pro bono efforts that can enable LSC grantees to use pro bono volunteers to serve larger numbers of low-income clients and improve the quality and effectiveness of the services provided. The key goals of the Pro Bono Innovation Fund are to:

1. Address gaps in the delivery of legal services to low-income people;

2. Engage more lawyers and other volunteers in pro bono service;

3. Develop, test, and replicate innovative pro bono efforts.

C. Funding Categories

1. Planning Grants

In 2023, LSC piloted a new grant category, Planning Grants, to provide select organizations with the resources to assess their pro bono program and develop an action plan. Planning Grants are one-time, six-month grants.

2. Project Grants

Pro Bono Innovation Fund Project Grants aim to leverage volunteers to meet a critical, unmet and well-defined client need. Consistent with the key goals of the Pro Bono Innovation Fund, applicants are encouraged to focus on engaging volunteers to increase free civil legal aid for low-income Americans by proposing new, replicable ideas.

Applicants are strongly encouraged to research prior Pro Bono Innovation Fund projects to replicate and improve upon them. LSC is particularly interested in applications that propose to replicate projects LSC has previously funded with ''Sustainability'' Grants. Project Grants can be either 18 or 24 months.

3. Transformation Grants

Pro Bono Innovation Fund Transformation Grants aim to support LSC grantees in comprehensive assessment and restructuring of pro bono programs through new applications of existing best practices in pro bono delivery. Each Transformation Grant will support a rigorous assessment of an LSC grantee's pro bono program and the identification of best practices in pro bono delivery that are best suited to that grantee's needs and circumstances. Transformation Grants are targeted towards LSC grantees whose leadership is committed to restructuring an entire pro bono program and incorporating pro bono best practices into core, high-priority client services with an urgency to create a high-impact pro bono program. This funding opportunity is open to all LSC grantees but is primarily intended for LSC grantees who have been unsuccessful applying for Project Grants or who have never applied for a Pro Bono Innovation Fund grant in the past. Transformation Grants can be either 24 or 36 months.

4. Sustainability Grants

Pro Bono Innovation Fund Sustainability Grants are available to current Pro Bono Innovation Fund grantees who received a 2022 Project grant. Sustainability Grants aim to support further development of the most promising and replicable Pro Bono Innovation Fund projects with an additional 24 months of funding so grantees can leverage new sources of revenue for the project and collect meaningful data to demonstrate the project's results and outcomes for clients and volunteers. Applicants for Sustainability Grants will be asked to propose an ambitious strategy that reduces the Pro Bono Innovation Fund contribution to the project over the Sustainability Grant term. Sustainability Grants can only be 24 months.

D. Available Funds and Additional Consideration for 2021 Grants

The amount of funds available for Pro Bono Innovation Fund Grants for FY2024 depends on LSC's final appropriation. LSC currently operates under a Continuing Resolution for FY2024, which funds the Federal government through November 17, 2023. The Continuing Resolution maintains funding for the Pro Bono Innovation Fund at $5,000,000. LSC will make Pro Bono Innovation Fund grant decisions for FY2023 in the summer of 2023. LSC anticipates publicizing the total amount available for Pro Bono Innovation Fund grants when Congress enacts the FY2023 appropriation.

LSC will not designate fixed or estimated amounts for the three different funding categories and will make grant awards for the three categories within the total amount of funding available.

E. Grant Terms

Pro Bono Innovation Fund awards can have grant terms of 6, 18, 24, or 36 months, depending on the category of grant.

	6 Months	12 Months	18 Months	24 Months	36 Months
Planning Grants	√	X	X	X	X
Project Grants	X	X	√	√	X
Transformation Grants	X	X	X	√	√
Sustainability Grants	X	X	X	√	X

Applicants for Planning Grants can apply for a 6-month grant. Applicants for Project Grants can apply for either an 18- or a 24-month grant. Applicants for Transformation Grants can apply for either a 24- or a 36-month grant. Applicants for Sustainability Grants can apply for a 24-month grant only. Applications must cover the full

proposed grant term. The grant term is expected to commence on October 1, 2023.

III. Grant Application Process

A. Pro Bono Innovation Fund Grant Application Process

The Pro Bono Innovation Fund application process will be administered in LSC's unified grants management system, GrantEase. Applicants must first submit a Pre-Application to LSC in GrantEase by January 16, 2024 to be considered for a grant. After review by LSC Staff, LSC's President decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by early March 2024. Full applications are due to LSC in the GrantEase system on May 6, 2024. Once received, full applications will undergo a rigorous review by LSC staff and other subject matter experts. LSC's President makes the final decision on funding for the Pro Bono Innovation Fund.

B. Late or Incomplete Applications

LSC may consider a request to submit a Pre-Application after the deadline, but only if the Applicant has submitted an email to *probonoinnovation@lsc.gov* explaining the circumstances that caused the delay prior to the Pre-Application deadline. Communication with LSC staff, including assigned Program Liaisons, is not a substitute for sending a formal request and explanation to *probonoinnovation@lsc.gov.* At its discretion, LSC may consider incomplete applications. LSC will determine the admissibility of late or incomplete applications on a case-by-case basis.

C. Multiple Pre-Applications

Applicants may submit multiple Pre-applications under the same or different funding category. If applying for multiple grants, applicants should submit separate Pre-applications for each funding request.

D. Additional Information and Guidelines

Additional guidance and instructions on the Pro Bono Innovation Fund Pre-Application and Application processes, will be available and regularly updated at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/pro-bono-innovation-fund.*

(Authority: 42 U.S.C. 2996g(e).)

Dated: November 14, 2023.

Stefanie Davis,

Deputy General Counsel for Administrative and Regulatory Practice, Legal Services Corporation.

[FR Doc. 2023–25550 Filed 11–17–23; 8:45 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Updated Guidance for Modernizing the Federal Risk Authorization Management Program (FedRAMP); Extension of Public Comment Period

AGENCY: Office of Management and Budget.

ACTION: Notice of extension of public comment period.

SUMMARY: On October 27, 2023, the Office of Management and Budget (OMB) published a notice entitled ''Request for Comments on Updated Guidance for Modernizing the Federal Risk Authorization Management Program (FedRAMP).'' OMB is extending the public comment period announced in that notice, which currently closes on November 27, 2023, by 26 days. The comment period will now remain open until December 22, 2023, to allow additional time for the public to review and comment on the initial proposals.

DATES: With the extension provided by this notice, comments on the proposed guidance ''Modernizing the Federal Risk Authorization Management Program (FedRAMP)'' published October 27, 2023, at 88 FR 73878, must be provided in writing to OMB no later than December 22, 2023, to ensure consideration during the final decision-making process.

ADDRESSES: The proposed memorandum is available at *https://www.cio.gov/policies-and-priorities/FedRAMP/.*

Submission of comments is voluntary. Please submit comments via *https://www.regulations.gov,* a Federal website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''OMB–2023–0021'' in the search box, click ''Search,'' click the ''Comment'' button underneath ''Request for Comments on Proposed Guidance for Modernizing the Federal Risk Authorization Management Program (FedRAMP),'' and follow the instructions for submitting comments. All comments received will be posted to *https://www.regulations.gov,* so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information). Additionally, the OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01 includes a list of routine uses associated with the collection of this information.

FOR FURTHER INFORMATION CONTACT: Carol Bales, OMB, at 202.395.9915 or *cbales@omb.eop.gov* or Laura Gerhardt, at 202.881.8928 or *Laura.G.Gerhardt@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Rationale: Based on consideration of requests received from stakeholders, which are available for the public to view in the docket on *www.regulations.gov* for OMB's October 27, 2023 notice, OMB is extending the public comment period announced in that notice for an additional 26 days. Therefore, the public comment period will close on December 22, 2023.

Docket: OMB has established a docket for the October 27, 2023 notice under Docket ID No. OMB–2023–0021.

Clare Martorana,

Federal Chief Information Officer, Office of the Federal Chief Information Officer, Office of Management Budget.

[FR Doc. 2023–25594 Filed 11–17–23; 8:45 am]

BILLING CODE 3110–05–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883) (Virtual).

Date and Time: December 15, 2023; 12:00 p.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Zoom Videoconference).

Attendance information for the meeting will be forthcoming on the website: *https://www.nsf.gov/mps/ast/aaac.jsp.*

Type of Meeting: Open.

Contact Person: Dr. Carrie Black, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–2426.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space

Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies. To prepare the annual report.

Agenda: To provide updates on Agency activities and to discuss the Committee's draft annual report due 15 March 2024.

Dated: November 15, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–25626 Filed 11–17–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Aviation Safety Summit

On Wednesday, December 6, 2023, the National Transportation Safety Board (NTSB) will hold a Safety Summit on Mental Health and the Aviation Sector. The roundtable will begin at 9:30 a.m. and is open to the public. Attendance is free but attendees must register to attend. Visit *www.ntsb.gov* for more information. Chair Jennifer Homendy will preside over the safety summit.

Below is the preliminary agenda: (9:30 a.m. to 4:30 p.m.)

1. Opening remarks by Chair Homendy.
2. Panel 1: Accounts of those affected by current policies.
3. Panel 2: Presentations from a panel of Mental Health experts.
4. Panel 3: A roundtable discussion from experts including, academics, industry, and clinicians.
5. Chair Homendy Closing remarks.

The forum will be held in the NTSB Boardroom and Conference Center, located at 429 L'Enfant Plaza SW, Washington, DC. The public can view the forum in person. An archived version of the proceedings is expected to be available at a later date.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Tuesday, November 28, 2023. Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

NTSB Media Contact: Peter Knudson, *peter.knudson@ntsb.gov.*

NTSB Forum Manager: Sarah Puro, *sarah.puro@ntsb.gov.*

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2023–25629 Filed 11–17–23; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323; NRC–2023–0192]

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application for the renewal of Facility Operating License Nos. DPR–80 and DPR–82, which authorize Pacific Gas and Electric Company (PG&E, the applicant) to operate Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2. The renewed licenses would authorize the applicant to operate DCPP for an additional 20 years beyond the period specified in each of the current licenses. The current operating licenses for DCPP expire as follows: Unit 1 on November 2, 2024, and Unit 2 on August 26, 2025.

DATES: The license renewal application referenced in this document is available on November 7, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0192 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0192. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Public Library:* A copy of the license renewal application for DCPP can be accessed at the following public library: San Luis Obispo Library, 995 Palm St, San Luis Obispo, CA 93403.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brian Harris, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2277; email: *Brian.Harris2@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has received an application (ADAMS Accession No. ML23311A154) from PG&E, dated November 7, 2023, filed pursuant to section 103 of the Atomic Energy Act of 1954, as amended, and part 54 of title 10 of the *Code of Federal Regulations,* ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' to renew the operating licenses for DCPP. Renewal of the licenses would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating licenses for DCPP expire as follows: Unit 1 on November 2, 2024, and Unit 2 on August 26, 2025. The DCPP units are pressurized-water reactors located in Avila Beach, California. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

A copy of the license renewal application for DCPP is also available to local residents near the site at the San Luis Obispo Library, 995 Palm St, San Luis Obispo, CA 93403.

Dated: November 15, 2023.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Project Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–25578 Filed 11–17–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 20, 27, December 4, 11, 18, 25, 2023. The

schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov*.

MATTERS TO BE CONSIDERED:

Week of November 20, 2023

There are no meetings scheduled for the week of November 20, 2023.

Week of November 27, 2023—Tentative

There are no meetings scheduled for the week of November 27, 2023.

Week of December 4, 2023—Tentative

There are no meetings scheduled for the week of December 4, 2023.

Week of December 11, 2023—Tentative

Tuesday, December 12, 2023

10:00 a.m. Discussion of the Administration's Short- and Long-term Domestic, Uranium Fuel Strategy (Public Meeting), (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/*.

Thursday, December 14, 2023

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting), (Contact: Erin Deeds: 301–415–2887)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/*.

Week of December 18, 2023—Tentative

There are no meetings scheduled for the week of December 18, 2023.

Week of December 25, 2023—Tentative

There are no meetings scheduled for the week of December 25, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: November 15, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–25653 Filed 11–16–23; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98932; File No. SR–OCC–2023–007]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

November 14, 2023.

I. Introduction

On August 10, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–007 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017, between OCC and National Securities Clearing Corporation, OCC's rules related to liquidity risk management, and OCC's rules related to default management in connection with the proposed modifications to the Existing Accord.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on August 30, 2023.[4] The Commission has received no comments regarding the Proposed Rule Change.

On September 25, 2023, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On November 8, 2023, OCC filed a Partial Amendment No. 1 to the Proposed Rule Change.[7] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is instituting proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,[8] to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1 (hereinafter defined as ''Proposed Rule Change'').

II. Summary of the Proposed Rule Change

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 88 FR 59976.

[4] Securities Exchange Act Release No. 98215 (Aug. 24, 2023), 88 FR 59976 (Aug. 30, 2023) (File No. SR–OCC–2023–007) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2023–801) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on August 30, 2023. Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (File No. SR–OCC–2023–801).

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR–OCC–2023–007).

[7] Partial Amendment No. 1 delays implementation of the proposed change. As amended, OCC would implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

[8] 15 U.S.C. 78s(b)(2)(B).

listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[9] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (''E&A Activity''). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord'' agreement, that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (''Common Members'').

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a defaulted Common Member. To the extent NSCC chooses not to guaranty such transactions, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default of the Common Member, which presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as $300 billion.[10] Second, settlement outside of NSCC introduces significant operational complexities.[11]

OCC proposes to revise the Accord to address the liquidity and operational issues that arise under the current Accord. Specifically, the proposed changes to the Accord would require NSCC to guaranty the positions of a defaulting Common Member if OCC makes a payment to cover the incremental risk posed by such positions (the ''Guaranty Substitution Payment'' or ''GSP''). Based on historical data, the GSP could be as much as $6 billion (in contrast with the potential $300 billion required for alternative settlement).[12]

The total amount owed by the Common Member would be a combination of the member's unpaid deposit to the NSCC Clearing Fund (''Required Fund Deposit'')[13] and Supplemental Liquidity Deposit.[14] The SLD portion of the GSP would be the unpaid SLD associated with any E&A Activity. The Required Fund Deposit portion of the GSP, however, would be estimated by reference to the day-over-day change in gross market value of the Common Member's positions at NSCC as a proxy for estimating what percentage of the member's Required Fund Deposit is attributable to E&A Activity. OCC acknowledges that this methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.[15]

In addition to revising the Accord, OCC also proposes changes to its rules in connection with the proposed changes to the Accord. For example, OCC proposes to change its rules to permit payment of the GSP to NSCC. OCC further proposes to revise its rules related to liquidity risk management to account for the potential need to make such a payment to NSCC. OCC proposes to incorporate the GSP into its stress testing framework as a liquidity demand and would estimate the potential demand based on the peak GSP observed over a one-year lookback.[16] Such stress testing would be based on the total GSP, rather than the portion estimated to arise out of E&A activity.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.[17] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act[19] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,[20] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;
- Rule 17Ad–22(e)(1) under the Exchange Act,[21] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions;
- Rule 17Ad–22(e)(7) under the Exchange Act,[22] which requires, in part,

[9] The term ''physically-settled'' as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (*i.e.,* delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

[10] *See* Notice of Filing, 88 FR at 59977.

[11] *See id.*

[12] *See id.*

[13] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59979, n.27.

[14] Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as ''Supplemental Liquidity Deposits'' or ''SLD.'' *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59979, n.28.

[15] *See* Notice of Filing, 88 FR at 59979–80. OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets. *See* Notice of Filing, 88 FR at 59980, n.31.

[16] Because not all types of expirations are the same with respect to the notional amount of activity sent by OCC to NSCC, OCC proposes to use five separate categories of expirations with potentially different GSP amounts to apply. *See* Notice of Filing, 88 FR at 59986 (defining the following five categories: standard monthly expiration, end of week expirations, end of month expiration, bank holiday expirations, and daily expirations).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78q–1.

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(1).

[22] 17 CFR 240.17Ad–22(e)(7).

that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity; and

• Rule 17Ad–22(e)(20) under the Exchange Act,[23] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F)[24] and Rules 17Ad–22(e)(1), (e)(7), and (e)(20)[25] of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Exchange Act,[26] any request for an opportunity to make an oral presentation.[27]

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing[28] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–OCC–2023–007 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–OCC–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR–OCC–2023–007 and should be submitted on or before December 11, 2023. Rebuttal comments should be submitted by December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25545 Filed 11–17–23; 8:45 am]

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[23] 17 CFR 240.17Ad–22(e)(17)(i).

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] 17 CFR 240.17Ad–22(e)(1), 17 CFR 240.17Ad–22(e)(7), and 17 CFR 240.17Ad–22(e)(20).

[26] 17 CFR 240.19b–4(g).

[27] Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] *See* OCC Notice of Filing, *supra* note 4.

[29] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98933; File No. SR-CboeBZX–2023–062]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Initial Period After Commencement of Trading of a Series of ETF Shares on the Exchange as It Relates to the Holders of Record and/or Beneficial Holders, as Provided in Exchange Rule 14.11(l)

November 14, 2023.

On August 14, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the initial period after commencement of trading of a series of ETF Shares on the Exchange as it specifically relates to holders of record and/or beneficial holders under BZX Rule 14.11(l). The proposed rule change was published for comment in the **Federal Register** on September 1, 2023.[3]

On September 25, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98231 (August 28, 2023), 88 FR 60516 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98497 (September 25, 2023), 88 FR 67397 (September 29, 2023) (designating November 30, 2023, as the date by which the Commission will either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change). The Commission has received no comments on the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

whether to approve or disapprove the proposed rule change.

I. Description of the Proposal

A continued listing requirement for ETF Shares [7] currently provides that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX Rule 14.12 for, a series of ETF Shares for which there are fewer than 50 beneficial holders for 30 or more consecutive trading days (''Beneficial Holders Rule'').[8] The Exchange is proposing to change the date after which a series of ETF Shares must have at least 50 beneficial holders or be subject to delisting proceedings under BZX Rule 14.12 (''Non-Compliance Period''). Specifically, the Exchange seeks to extend the Non-Compliance Period from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange.[9]

The Exchange asserts that it would be appropriate to increase the Non-Compliance Period from 12 months to 36 months because: (1) it would bring the rule more in line with the life cycle of an exchange-traded product (''ETP''); [10] (2) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (3) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the continued listing standard is intended to address.[11]

According to the Exchange, the ETP space is more competitive that it has ever been, with more than 2,000 ETPs listed on exchanges.[12] As a result, distribution platforms have become more restrictive about the ETPs they will allow on their systems, often requiring a minimum existing track record (*e.g.,* at least twelve months) and a minimum level of assets under management (*e.g.,* at least $100 million).[13] Many larger entities also require a one-year track record before they will invest in an ETP.[14] In the Exchange's view, this has slowed the growth cycle of the average ETP and has resulted in a significant number of deficiencies with respect to satisfying the Beneficial Holders Rule over the last several years.[15] Specifically, the Exchange notes that it has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders Rule since 2015, 30 of which ultimately were able to achieve compliance after the deficiency notice was issued.[16]

In addition, the Exchange believes that the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products with insufficient investor interest, and that the Beneficial Holders Rule has resulted in the forced termination of ETPs that issuers believed were still economically viable.[17] The Exchange states that there are significant costs associated with the launch and continued operation of an ETP, and notes that the Exchange has had 148 products voluntarily delist since 2018.[18] The Exchange also questions whether the number of beneficial holders is a meaningful measure of market interest in an ETP, and believes that an ETP issuer is incentivized to have as many beneficial holders as possible.[19]

Finally, the Exchange states that the proposal ''does not create any significant change in the risk of manipulation for ETF Shares listed on the exchange.'' [20] The Exchange points out that the Beneficial Holders Rule does not apply during the first 12 months that an issue of ETF Shares is listed on the Exchange. Therefore, according to BZX, ''[a]ny risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules.'' [21] The Exchange also states that it has in place a robust surveillance program for ETPs that it believes is sufficient to deter and detect manipulation and other violative activity, and that the Exchange (or the Financial Industry Regulatory Authority on its behalf) communicates as needed with other members and other entities of the Intermarket Surveillance Group.[22] The Exchange believes that ''these robust surveillance procedures successfully mitigated manipulation concerns during an ETPs first 12 months of listing on the Exchange, during which there is currently no Beneficial Holder requirement,'' and that ''these surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance period for the Beneficial Holders Rules from 12 months to 36 months.'' [23] Lastly, the Exchange asserts that other continued listing standards (the disclosure obligations applicable under Rule 6c–11 of the 1940 Act for series of ETF Shares) ''are generally sufficient to mitigate manipulation concerns associated with ETF Shares.'' [24]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–062 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [25] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,[26] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of and input concerning the proposed rule change's consistency with the Act and, in particular, Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to

[7] The term ''ETF Shares'' means shares of stock issued by an Exchange-Traded Fund. *See* BZX Rule 14.11(l)(3)(A). The term ''Exchange-Traded Fund'' has the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11 under the Investment Company Act of 1940 (''1940 Act''). *See* BZX Rule 14.11(l)(3)(B).

[8] *See* BZX Rule 14.11(l)(4)(B)(i)(c).

[9] Earlier, on April 29, 2020, the Exchange filed a proposed rule change to extend the Non-Compliance Period of the Beneficial Holders Rule applicable to Index Fund Shares, Managed Fund Shares, and ETF Shares from 12 to 36 months. The Commission disapproved that proposed rule change. *See* Securities Exchange Act Release No. 90819 (December 29, 2020), 86 FR 332 (January 5, 2021).

[10] The Exchange notes that ETF Shares is a type of ETP.

[11] *See* Notice, 88 FR at 60517.

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.* at 60518.

[18] *See id.*

[19] *See id.*

[20] *Id.*

[21] *Id.*

[22] *See id.*

[23] *Id.*

[24] *Id.*

[25] 15 U.S.C. 78s(b)(2)(B).

[26] *Id.*

permit unfair discrimination between customers, issuers, brokers, or dealers.'' [27]

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements in exchange listing standards. Among other things, such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[28]

As discussed above, the Exchange is proposing to increase the Non-Compliance Period from 12 months to 36 months, thereby extending by two years the length of time during which a series of ETF Shares listed on the Exchange would have no requirement to have a minimum number of beneficial holders. In support of its proposal, the Exchange emphasizes that some ETPs have had difficulty complying with the Beneficial Holders Rule. The Exchange indicates that non-compliance with the Beneficial Holders Rule is increasing because the ETP market has become so competitive, and there are so many of them, that it can be difficult to acquire the requisite number of beneficial holders within the existing Non-Compliance Period. The Exchange also believes that the existing Beneficial Holders Rule forces the delisting of ETPs that may still be economically viable.

While the Exchange takes the position that the highly competitive ETP market has made compliance with the Beneficial Holders Rule difficult, and led to the delisting of ETPs that may be economically viable, the Exchange does not explain why these compliance difficulties justify extending the Non-Compliance Period for this core quantitative listing standard for an additional two years. The Exchange does not explain why the manipulation and other regulatory risks would not be greater with a very small number of beneficial holders, and tripling the period during which the same regulatory risks posed by a Non-Compliance Period would be present is consistent with the Exchange Act. The Exchange states that no new manipulation concerns would arise with a longer Non-Compliance Period than a shorter one, and that existing surveillances and other listing standards sufficient to mitigate manipulation concerns for 12 months are sufficient for 36 months,[29] but does not explain in any detail the basis for this view,[30] or the impact of its proposal on the maintenance of fair and orderly markets or other applicable Exchange Act standards.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder. . .is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [31] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[32]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 11, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 26, 2023.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the

[27] 15 U.S.C. 78f(b)(5).

[28] *See, e.g.,* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17) (stating that the distribution standards, which includes exchange holder requirements ''. . . should help to ensure that the [Special Purpose Acquisition Company's] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets''); Securities Exchange Act Release No. 86117 (June 14, 2019), 84 FR 28879 (June 20, 2018) (SR–NYSE–2018–46) (disapproving a proposal to reduce the minimum number of public holders continued listing requirement applicable to Special Purpose Acquisition Companies from 300 to 100).

[29] *See* Notice, 88 FR at 60518.

[30] Specifically, BZX does not discuss why it believes that existing surveillance procedures ''successfully mitigated manipulation concerns'' during the first 12 months after listing.

[31] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[32] *See id.*

[33] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–062 and should be submitted on or before December 11, 2023. Rebuttal comments should be submitted by December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25546 Filed 11–17–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98925; File No. SR–MRX–2023–20]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend MRX Options 7, Section 5 To Amend Route-Out Fees

November 14, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2023, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[34] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates. Specifically, the Exchange proposes to amend Part A, Route-Out Fees. The Routing Fees apply to executions of orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.

Today, the Exchange assesses all Members a $0.55 per contract Penny Symbol Routing Fee and a $1.09 Non-Penny Symbol Routing Fee to route to another options exchange. The Exchange proposes to instead assess a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange regardless of the capacity of the order. The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options Members. In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do Not Route'' to avoid any Routing Fees.[3] The proposed structure for Routing Fees is similar to another options market.[4] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Routing Fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[7]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission

[3] *See* Supplementary Material .04 to MRX Options 3, Section 7.

[4] *See* MEMX's Options Fee Schedule at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.* MEMX assesses a $0.60 per contract Penny Symbol routing fee and a $1.20 Non-Penny Symbol routing fee.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market.

The Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange is reasonable because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do Not Route'' to avoid any Routing Fees.[9] The proposed structure for Routing Fees is similar to another options market.[10]

The Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange is equitable and not unfairly discriminatory because these Routing Fees will apply equally to all options Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange does not impose an undue burden on competition because these fees will apply equally to all options Members.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2023–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MRX–2023–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2023–20 and should be submitted on or before December 11, 2023.

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] *See* Supplementary Material .04 to MRX Options 3, Section 7.

[10] *See* MEMX's Options Fee Schedule at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/*. MEMX assesses a $0.60 per contract Penny Symbol routing fee and a $1.20 Non-Penny Symbol routing fee.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25542 Filed 11–17–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98924; File No. SR–GEMX–2023–14]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX Options 7, Section 4 To Amend Route-Out Fees

November 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2023, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 4, Other Options Fees and Rebates.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 4, Other Options Fees and Rebates. Specifically, the Exchange proposes to amend Part A, Route-Out Fees. The Routing Fees apply to executions of orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.

Today, the Exchange assesses Market Makers,[3] Non-Nasdaq GEMX Market Makers (FarMM),[4] Firm Proprietary[5]/Broker-Dealers[6] and Professional Customers[7] a $0.55 per contract Penny Symbol Routing Fee and a $1.09 Non-Penny Symbol Routing Fee to route to another options exchange. Additionally, today, the Exchange assess Priority Customers[8] a $0.50 per contract Penny Symbol Routing Fee and a $0.90 Non-Penny Symbol Routing Fee to route to another options exchange.

The Exchange proposes to instead assess a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange regardless of the capacity of the order. The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options Members. In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do Not Route'' to avoid any Routing Fees. The proposed structure for Routing Fees is similar to another options market.[9] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Routing Fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[4] A ''Non-Nasdaq GEMX Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* Options 7, Section 1(c).

[5] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1(c).

[6] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* Options 7, Section 1(c).

[7] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1(c).

[8] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in the Pricing Schedule the term ''Priority Customer'' includes ''Retail''. *See* Options 7, Section 1(c).

[9] *See* MEMX's Options Fee Schedule at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/.* MEMX assesses a $0.60 per contract Penny Symbol routing fee and a $1.20 Non-Penny Symbol routing fee.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market.

The Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee to route to another options exchange, regardless of capacity, is reasonable because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as ''Do Not Route'' to avoid any Routing Fees. The proposed structure for Routing Fees is similar to another options market.[14]

The Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee, regardless of capacity, to route to another options exchange is equitable and not unfairly discriminatory because these uniform Routing Fees will apply equally to all options Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange's proposal to amend its Routing Fees such that all Members would pay a $0.60 per contract Penny Symbol Routing Fee and a $1.20 Non-Penny Symbol Routing Fee, regardless of capacity, to route to another options exchange does not impose an undue burden on competition because these uniform Routing Fees will apply equally to all options Members.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–GEMX–2023–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–GEMX–2023–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *See* MEMX's Options Fee Schedule at *https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/*. MEMX assesses a $0.60 per contract Penny Symbol routing fee and a $1.20 Non-Penny Symbol routing fee.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–GEMX–2023–14 and should be submitted on or before December 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25541 Filed 11–17–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98930; File No. SR–NSCC–2023–007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

November 14, 2023.

I. Introduction

On August 10, 2023, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–NSCC–2023–007 (''Proposed Rule Change'') pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017, between OCC and National Securities Clearing Corporation, NSCC's related rules.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on August 30, 2023.[4] The Commission has received no comments regarding the Proposed Rule Change.

On September 25, 2023, pursuant to section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On November 8, 2023, NSCC filed a Partial Amendment No. 1 to the Proposed Rule Change.[7] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is instituting proceedings, pursuant to section 19(b)(2)(B) of the Exchange Act,[8] to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1 (hereinafter defined as ''Proposed Rule Change'').

II. Summary of the Proposed Rule Change

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[9] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (''E&A Activity''). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord'' agreement, that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (''Common Members'').

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a defaulted Common Member. To the extent NSCC chooses not to guaranty such transactions, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default of the Common Member, which presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as $300 billion.[10] Second, settlement outside of NSCC introduces significant operational complexities.[11]

NSCC proposes to revise the Accord to address the liquidity and operational issues that arise under the current Accord. Specifically, the proposed changes to the Accord would require NSCC to guaranty the positions of a defaulting Common Member if OCC makes a payment to cover the incremental risk posed by such positions (the ''Guaranty Substitution Payment'' or ''GSP''). Based on historical data, the GSP could be as much as $6 billion (in contrast with the potential $300 billion required for alternative settlement).[12]

The total amount owed by the Common Member would be a combination of the member's unpaid deposit to the NSCC Clearing Fund (''Required Fund Deposit'')[13] and Supplemental Liquidity Deposit.[14] The SLD portion of the GSP would be the unpaid SLD associated with any E&A Activity. The Required Fund Deposit portion of the GSP, however, would be estimated by reference to the day-over-day change in gross market value of the Common Member's positions at NSCC

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 88 FR 59976.

[4] Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR–NSCC–2023–007) (''Notice of Filing'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR–NSCC–2023–007).

[7] Partial Amendment No. 1 delays implementation of the proposed change. As amended, NSCC would implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] The term ''physically-settled'' refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (*i.e.,* delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

[10] *See* Notice of Filing, 88 FR at 59969.

[11] *See id.*

[12] *See id.*

[13] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59971, n.26.

[14] Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as ''Supplemental Liquidity Deposits'' or ''SLD.'' *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59971, n.27.

as a proxy for estimating what percentage of the member's Required Fund Deposit is attributable to E&A Activity. NSCC acknowledges that this methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.[15] In addition to revising the Accord, NSCC also proposes changes to its rules in connection with the proposed changes to the Accord. For example, NSCC would amend its rules to clarify that NSCC's guaranty would attach when NSCC receives both the Required Fund Deposit and Supplemental Liquidity Deposit.[16]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.[17] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to section 19(b)(2)(B) of the Exchange Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act,[19] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,[20] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;
- Rule 17Ad–22(e)(1) under the Exchange Act,[21] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions;
- Rule 17Ad–22(e)(7) under the Exchange Act,[22] which requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity; and
- Rule 17Ad-22(e)(20) under the Exchange Act,[23] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with section 17A(b)(3)(F)[24] and Rules 17Ad–22(e)(1), (e)(7), and (e)(20)[25] of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Exchange Act,[26] any request for an opportunity to make an oral presentation.[27]

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing[28] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NSCC–2023–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NSCC–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than

[15] *See* Notice of Filing, 88 FR at 59971. OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets. *See* Notice of Filing, 88 FR at 59971, n.30.

[16] *See* Notice of Filing, 88 FR at 59975.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78q–1.

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(1).

[22] 17 CFR 240.17Ad–22(e)(7).

[23] 17 CFR 240.17Ad–22(e)(17)(i).

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] 17 CFR 240.17Ad–22(e)(1), 17 CFR 240.17Ad–22(e)(7), and 17 CFR 240.17Ad–22(e)(20).

[26] 17 CFR 240.19b–4(g).

[27] Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] *See* Notice of Filing, *supra* note 4.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on the Depository Trust Company's website (*http://dtcc.com/legal/sec-rule-filings.aspx*).

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR–NSCC–2023–007 and should be submitted on or before December 11, 2023. Rebuttal comments should be submitted by December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25544 Filed 11–17–23; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98935; File No. SR–ISE–2023–20]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdasq–100 Index® Options With a Third-Friday-of-the-Month Expiration

November 14, 2023.

I. Introduction

On September 28, 2023, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the listing and trading of p.m.-settled Nasdaq–100 Index options with a third-Friday-of-the-month (''Third Friday'') expiration. The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.[3] The Commission did not receive any comment letters and is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

ISE proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq–100 Index (''NDXP'') options with a Third Friday expiration. The Exchange currently can list a.m.-settled Third Friday expirations on Nasdaq–100 Index (''NDX'') options.[4] With this proposal, the Exchange would have Third Friday expirations on NDX options that are both a.m.-settled and p.m.-settled on the same day.[5] The Exchange states that the conditions for listing options on NDXP with Third Friday expirations will be similar to the a.m.-settled NDX Third Friday expirations.[6] The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq–100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq–100 Index whose exercise settlement value is the closing value of the Nasdaq–100 Index on the expiration day.

The proposed contract would use a $100 multiplier, and the minimum trading increment would be $0.05 for options trading below $3.00 and $0.10 for all other series.[7] Strike price intervals would be set at no less than $2.50.[8] Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months[9] as well as LEAPS.[10] The product would have European-style exercise. Because the product is based on NDX, there would be no position limits.[11]

NDXP options are series of the NDX options class.[12] Currently, these NDXP options may expire any day of the week: Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.[13] Third Friday p.m.-settled options trading under the NDXP symbol will be a new type of series under the Nasdaq–100 Index options class and not a new options class—therefore all Third-Friday NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.[14]

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including Third Friday NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to Exchange Rules Options 6E, Section 2.[15] The trading hours for NDXP, including Third Friday NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange notes that the Commission recently approved trading of Third Friday expirations for options based on ⅕ the value of the Nasdaq–100 Index (''NQX'').[19] The Exchange states that the introduction of Third Friday NDXP will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.[20] The Exchange

[3] *See* Securities Exchange Act Release No. 98643 (September 29, 2023), 88 FR 68843 (''Notice'').

[4] *See* Notice, *supra* note 3 at 68842.

[5] *See id.*

[6] *See id.*

[7] *See* Options 3, Section 3, Minimum Increments.

[8] *See* Options 4A, Section 12(c)(1).

[9] The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq–100 Index, since both options classes are derived from the Nasdaq–100 Index.

[10] *See* Options 4A, Section 12(b)(1).

[11] For a more detailed description of the proposed Third Friday NDXP contract, *see* Notice, *supra* note 3.

[12] *See* Notice, *supra* note 3 at 68842.

[13] *See* Supplementary Material .07(a) to Options 4, Section 5.

[14] *See* Options 3, Section 6(c) and (d).

[15] *See* Notice, *supra* note 3 at 68843.

[16] The Exchange notes that trading in NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated. *See* Notice, *supra* note 3 at 68843, n. 16.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 98450 (September 20, 2023), 88 FR 66 111 (September 26, 2023) (SR–ISE–2023–08) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots) (''ISE Pilot Approval'').

[20] *See* Notice, *supra* note 3 at 68843.

further believes that listing Third Friday NDXP would not have any adverse effects or impact on market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading in its Nasdaq–100 Index options.[21] Further, the Exchange states it does not believe that any market disruptions will be encountered with the introduction of Nasdaq–100 Index options with third-Friday-of-the-month expiration dates.[22] The Exchange states it will monitor for any such disruptions or the development of any factors that could cause such disruptions.[23] Finally, the Exchange represents it has sufficient capacity to handle additional traffic associated with listing Third Friday NDXP options and that it has in place adequate surveillance procedures to monitor trading in Third Friday NDXP options.[24]

The Commission has had concerns about the adverse effects and impact of p.m.- settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading on expiration days.[25] However, the Commission recently approved proposals from several exchanges, including the Exchange, to permanently establish programs permitting the listing and trading of certain p.m.-settled broad-based index options.[26] In approving these proposals, the Commission reviewed data provided by the exchanges in their filings, the exchanges' pilot data and reports, as well as an analysis conducted at the direction of Staff from the Commission's Division of Economic and Risk Analysis and concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new p.m.-settled expiration was introduced.[27] Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.[28]

As noted above, the Exchange currently may trade Third Friday NQX options in addition to p.m.-settled NDX option with nonstandard expirations.[29] The Exchange's proposal, which would permit p.m.-settled Third Friday NDX, is reasonably designed as a limited expansion of existing p.m.-settled broad-based index option programs and may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions. The Exchange has represented that it has an adequate surveillance program in place to monitor trading in the Third Friday NDXP options and has the necessary systems capacity to support the new options series.[30] The Commission expects the Exchange to continue to monitor any potential risks from large p.m.-settled positions and take appropriate action on a timely basis if warranted.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[31] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–ISE–2023–20) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

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[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR–C2–2011–008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

[26] *See e.g.,* ISE Pilot Approval; Securities Exchange Act Release Nos. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR–Phlx–203–07) (Order approving a nonstandard expirations pilot program and p.m.-settled XND options) *and* 98454 (September 20, 2023), 88 FR 66103 at 66103–04 (September 26, 2023) (SR–CBOE–2023–005)(Order approving p.m.-settled Third Friday SPX options).

[27] *See e.g.,* ISE Pilot Approval, 88 FR at 66114.

[28] *See id.*

[29] *See supra* note 19. In addition, the Commission previously approved a pilot program permitting the listing and trading of Third Friday NDX options on Nasdaq PHLX LLC (''Phlx''). *See* Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (approving SR–Phlx–2017–04). Phlx did not list any options under the program and subsequently removed the rule from its rule book. See Securities Exchange Act Release No. 87517 (November 13, 2019), 84 FR 63910 (November 19, 2019) (SR–Phlx–2019–49).

[30] *See supra* note 24 and accompanying text.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98937; File Nos. SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEArca–2023–53, SR–NYSECHX–2023–16, SR–NYSENAT–2023–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE American LLC; NYSEArca, Inc.; NYSE Chicago, Inc.; NYSE National, Inc.; Order Approving Proposed Rule Changes To Establish Certain Alternative Procedures for the Allocation of Power in Co-Location

November 14, 2023.

I. Introduction

On August 3, 2023, New York Stock Exchange LLC, NYSE American LLC, NYSEArca, Inc., and NYSE Chicago, Inc. (the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend its connectivity fee schedule to include an alternative procedure to allocate power in the Mahwah Data Center based on deposit-guaranteed orders from colocation Users in certain circumstances. On August 17, 2023, NYSE National, Inc., filed with the Commission the same proposed amendments to its connectivity fee schedule. The proposed rule changes were published for comment in the **Federal Register** on August 22, 2023[3] and August 25, 2023.[4] The Commission received no comments on the proposed rule changes. This order grants approval of the proposed rule changes.

II. Description of the Proposed Rule Changes

A. Background

As more fully set forth in the Notice, the Exchanges represent that in recent years they have experienced ''unprecedented'' demand from colocation Users for cabinet space and power at the Mahwah Data Center (''MDC'').[5] The Exchanges filed, and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 98148 (August 16, 2023), 88 FR 57150 (SR–NYSE–2023–29); 98149 (August 16, 2023), 88 FR 57154 (SR–NYSEAMER–2023–39); 98150 (August 16, 2023), 88 FR 57142 (SR–NYSEArca–2023–53); 98151 (August 16, 2023), 88 FR 57159 (SR–NYSECHX–2023–16).

[4] *See* Securities Exchange Act Release No. 98171 (August 21, 2023), 88 FR 58364 (SR–NYSENAT–2023–18). Each proposal is referred to as the ''Notice'' and for ease of reference, page citations are to the Notice for NYSE–2023–29.

[5] Notice, *supra* note 3, at 57150. For purposes of each Exchange's colocation services, a ''User''

Continued

Commission approved, rules establishing purchasing limits and waitlists for cabinet space and power orders when supply is limited.[6] Pursuant to these rules, if available cabinet inventory and/or power fall below certain thresholds, certain purchasing limits on cabinets and power apply (''Cabinet and Power Purchasing Limits''), including that a User may not purchase more than 32 kW of power and four dedicated cabinets.[7] If the amount of available power is zero, or if a User requests an amount of power that, if provided, would cause the amount of available power to be zero, the Exchanges place orders on a waitlist (''Combined Waitlist'').[8] Orders on the Combined Waitlist are subject to the Cabinet and Power Purchasing Limits.[9] The Exchanges represent that a Combined Waitlist is in effect.

The Exchanges represent that although they expanded the amount of cabinet space and power available in the MDC in 2021 and 2022 by opening new colocation Hall 4, User demand for power continues to increase.[10] The Exchanges are currently building a new colocation hall (''Hall 5'') to satisfy this increased demand.[11] The Exchanges are also evaluating whether there is sufficient customer demand for additional power for it to invest in additional expansion.[12]

The Exchanges state that the current Combined Waitlist is inadequate to determine total demand for power because when the Combined Waitlist is in effect, current rules permit the Exchanges to accept one order at a time from a User and its Affiliates [13] of at most 32 kW of power.[14] The Exchanges represent that the approximately 700 kW of demand on the current Combined Waitlist may represent a ''mere fraction of User's true power requirements.'' [15] The Exchanges state that several Users on the current Combined Waitlist have expressed interest in purchasing more than 32 kW of power, specifically additional power of ''several hundred kilowatts.'' [16] The Exchanges seek better knowledge of User demand for power, and also state that their current rules regarding waitlist procedures are not well-tailored to allocating large amounts of power that become available all at once (*e.g.,* a new colocation hall opens).[17] Although there is a 32 kW limit on orders when less than 350 kW of unallocated power is available, any time that more than 350 kW of unallocated power is available (*i.e.,* the Combined Waitlist is not in effect), current rules permit Users to place unlimited orders that the Exchanges must allocate on a first-come, first-served basis.[18] The Exchanges anticipate that the availability of large amounts of power in Hall 5 in several intervals may result in the largest Users placing early orders for many hundreds of kilowatts of power that could effectively prevent Users with more modest demand from receiving newly available power.[19]

B. Proposed Alternative Power Allocation Procedures

To address these concerns, the Exchanges propose to add as Colocation Note 8 ''alternative'' procedures to assess power demand and allocate power in the Mahwah Data Center in certain circumstances.[20] Specifically, the Exchanges propose that they may announce, by customer notice, a 90-day window (''Ordering Window'') during which the Exchanges may accept unlimited deposit-guaranteed orders from Users.[21] If they announce an Ordering Window while the Cabinet and Power Purchasing Limits and/or the Cabinet and Combined Waitlist provisions are in effect, the terms of the Ordering Window would temporarily supersede the Cabinet and Power Purchasing Limits and/or the Cabinet and Combined Waitlist.[22]

Under the proposal, Users may submit orders for their anticipated needs, but each User (and its Affiliates) may finalize only one order for power during the Ordering Window.[23] During the Ordering Window, the provision of the Cabinet and Combined Waitlists in Colocation Note 7 that prohibits the Exchanges from accepting orders for more than four dedicated cabinets and/or 32 kW of power would not apply.[24] During the Ordering Window, a User may submit an order even if it already has an order pending on a Cabinet or Combined Waitlist.[25] While the Ordering Window is open, the Exchanges would not accept new orders to the Cabinet or Combined Waitlist established under Colocation Note 7, and any order submitted by a User must meet the requirements of the Ordering Window procedures as set forth in Colocation Note 8.[26]

Orders submitted during the Ordering Window are to be accompanied by a deposit equal to two months' worth of the monthly recurring costs of the amount of the new power ordered.[27] This deposit will be applied to the User's invoices for the first and subsequent months after power is delivered until the deposit is depleted.[28] The Exchanges further propose to finalize a User's order upon receipt of a User's signed order form and deposit, and to consider void any orders not finalized before the Ordering Window

means any market participant that requests to receive colocation services directly from the Exchange. *Id.* at 57150 n. 5.

[6] *Id. See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, and SR–NYSENAT–2020–28) (Notice of Filings of Amendment No. 1 and Order Granting Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1, Amending the Exchanges' Co-Location Services To Establish Procedures for the Allocation of Cabinets to Co-Located Users if Cabinet Inventory Falls Below Certain Thresholds). *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, SR–NYSENAT–2021–03) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment Nos. 1 and 2, to Establish Procedures for the Allocation of Power in Co-Location When Availability Falls Below Certain Thresholds). *See* Colocation Notes 6 and 7 in the Exchanges' Connectivity Fee Schedule, available at *https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.*

[7] *See* Colocation Note 6b in each Exchange's Connectivity Fee Schedule. Cabinet space is offered in the form of dedicated cabinet, which come with 4 to 8 kW of power, and partial cabinets, available in increments of eight-rack units of space, which may be allocated 1 or 2 kW of power.

[8] *See* Colocation Note 7b in each Exchange's Connectivity Fee Schedule. If only the Cabinet Limit is reached, pursuant to Colocation Note 7a, a Cabinet Waitlist is created. *See* Colocation Note 7a in each Exchange's Connectivity Fee Schedule.

[9] *See* Colocation Note 7b in each Exchange's Connectivity Fee Schedule.

[10] Notice, *supra* note 3, at 57150. The Exchanges represent that the Combined Waitlist includes 27 Users requesting in excess of an additional 700 kW of power *Id.* at 57151.

[11] *Id.*

[12] *Id.*

[13] An ''Affiliate'' of a User is defined as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.'' *See* Connectivity Fee Schedule, at 1.

[14] Notice, *supra* note 3, at 57151.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See* Notice, *supra* note 3, at 57153.

[20] *Id.* at 57152.

[21] Notice, *supra* note 3, at 57151.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 57151 n.10.

[27] *Id.* The Exchanges state that the required deposit would be calculated as the number of kilowatts ordered by the User in its Ordering Window order, multiplied by the appropriate ''Per kW Monthly Fee'' as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User. *See* Notice, *supra* note 3, at 57151 n.11.

[28] Notice, *supra* note 3, at 57152.

closes.[29] A User may modify its order during the Ordering Window, but such modification will not be finalized until the Exchange receives the User's signed modified order form and any additional deposit.[30] If the User withdraws its order during the Ordering Window, the deposit will be returned.[31]

The Exchanges propose allocation procedures for power after the Ordering Window ends. To prevent larger Users from placing large orders for power and preventing allocation of power to Users with more modest power needs, the Exchanges propose a multi-step allocation procedure. In step one, the Exchanges will allocate power to fill orders in effect on any waitlist in effect pursuant to Colocation Note 7 (*e.g.,* the current Combined Waitlist).[32] In step two, the Exchanges will allocate up to 32 kW of power to each User that finalized an order during the Ordering Window based on whether sufficient power is available.[33] If sufficient power is available, the Exchanges will allocate 32 kW of power to each User, except that orders for less than 32 kW would be filled only up to the number of kilowatts actually ordered.[34] If sufficient power is not available, the Exchanges will allocate the available power equally among all Users (rounded to a whole number of kilowatts), except the Exchanges will not allocate a User more kilowatts than it actually ordered.[35] If, after step two, there is no power to allocate, all orders finalized during the Ordering Window will be considered completed.[36]

If any power remains to be allocated after step two, the Exchanges will allocate power in step three to any orders that were not completely filled during step two.[37] If sufficient power is available, the Exchanges will allocate power to completely fill all remaining orders finalized during the Ordering Window.[38] If sufficient power is not available to completely fill all such orders, the Exchanges will allocate power to fill an identical percentage of each remaining order (rounded to a whole number of kilowatts).[39] All such orders will then be considered complete.[40] Further, any orders received after the end of the Ordering Window will not be included in the Ordering Window allocation process but instead will be subject to the terms of the Cabinet and Purchasing Power Limits and the associated waitlists.[41]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act,[43] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that the Exchanges' proposed Ordering Window and associated procedures for allocating power requested during the Ordering Window provide a rational objective means for the Exchanges to assess power demand by Users prospectively and to fairly allocate power requested by Users in circumstances where large amounts of power become available at once (*e.g.,* a new colocation hall opens). The Exchanges will allocate power for orders received during the Ordering Window pursuant to a three step process.[44] In step one, Users on the Combined Waitlist will have their orders filled first. In step two, Users would be allocated power equally, each receiving up to 32 kW of power requested during the Ordering Window if supply is sufficient (and each receiving power equally if power is not sufficient), with no User allocated more kilowatts than it actually ordered. In step three, if any power remains to be allocated, the Exchanges will allocate power to any orders that were not completely filled during step two if sufficient power is available (and will allocate power to fill an identical percentage of each remaining order if sufficient power is unavailable). The proposed allocation procedures would provide that that each User who has placed an order for power gets its order at least partially filled, and that larger Users do not use the Ordering Window to prevent power allocation to smaller Users with more modest power demands. Accordingly, the Commission believes that the proposed Ordering Window and associated allocation procedures are reasonably designed to facilitate an equitable allocation of available power and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. For the foregoing reasons, Commission finds that the proposals are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[45] that the proposed rule changes (SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEArca–2023–53, SR–NYSECHX–2023–16, SR–NYSENAT–2023–18) be, and hereby are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25548 Filed 11–17–23; 8:45 am]

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[29] *Id.* The Exchanges state that if User wishes to reduce an order that it placed during the Ordering Window, the User's deposit would not be reduced or returned, but instead would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted. *Id.* at 57152 n.12.

[30] Notice, *supra* note 3, at 57152.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated 32 kW of power during step two and no further power remained to be allocated after step 2, the User's order would be considered completed. The residual 68 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect). *Id.* at 57152 n.13.

[37] Notice, *supra* note 3, at 57152.

[38] *Id.*

[39] *Id.*

[40] *Id.* To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated a total of 90 kW of power in steps two and three, the order would be considered completed. The residual 10 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect). *Id.* at 57152 n.14.

[41] *See* Notice, *supra* note 3, at 57152, and Colocation Notes 6 and 7 in each Exchange's Connectivity Fee Schedule.

[42] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* text accompanying notes 32–41 *supra.*

[45] *See id.*

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98938; File No. SR–MEMX–2023–30]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Fees

November 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on November 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to (i) reduce the base rebate for executions of Retail Orders[4] in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Retail Volume''); (ii) modify the Liquidity Provision Tiers by: modifying the required criteria under Liquidity Provision Tiers 1, 2, 3, 4, and 5; decreasing the rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume'') under Liquidity Provision Tiers 2, 3, and 5; modifying the method by which the Exchange provides the rebate under Liquidity Provision Tiers 4 and 5; and eliminating Liquidity Provision Tier 6; (iii) adopt a new Retail Tier that provides an enhanced rebate for executions of Added Displayed Retail Volume priced at or above $1.00 per share; (iv) modify the required criteria under Liquidity Removal Tier 1; (v) modify the required criteria under Non-Display Add Tier 1; (vi) modify the NBBO Setter/Joiner Tiers by reducing the additive rebate per share under NBBO Setter/Joiner Tier 1, renaming such tier to ''NBBO Setter Tier 1'' and eliminating NBBO Setter/Joiner Tier 2; (vii) adopt a new Tape B Volume Tier that provides an additive rebate for executions of Added Displayed Volume in Tape B securities priced at or above $1.00 per share and add a corresponding relevant defined term to the ''Definitions'' section of the Fee Schedule; and (viii) adopt a new additive rebate for executions of Added Displayed Volume applicable to Displayed Liquidity Incentive (''DLI'') Tier 1 and Liquidity Provision Tier 1 or Liquidity Provision Tier 2; as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.5% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[6] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Reduce Base Rebate for Added Displayed Retail Volume

Currently, the Exchange provides a base rebate of $0.0034 per share for executions of Added Displayed Retail Volume. The Exchange now proposes to reduce the base rebate for executions of Added Displayed Retail Volume to $0.0032 per share.[7] The purpose of reducing the base rebate for executions of Added Displayed Retail Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of

[4] A ''Retail Order'' means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 11.21(a).

[5] Market share percentage calculated as of October 31, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

[7] The proposed base rebate for executions of Added Displayed Retail Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Retail Order'' with a Fee Code of ''Br'', ''Dr'' or ''Jr'', as applicable, on execution reports.

encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed base rebate for executions of Added Displayed Retail Volume remains competitive with the base rebates provided by other exchanges for executions of Retail Orders in securities priced at or above $1.00 per share that add displayed liquidity.[8]

Liquidity Provision Tiers

The Exchange currently provides a base rebate of $0.0015 per share for executions of Added Displayed Volume.[9] The Exchange also currently offers Liquidity Provision Tiers 1–6 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under Liquidity Provision Tier 1 and Liquidity Provision Tier 4, reducing the rebate for executions of Added Displayed Volume and modifying the required criteria under Liquidity Provision Tier 2, Liquidity Provision Tier 3, and Liquidity Provision Tier 5, and eliminating Liquidity Provision Tier 6, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV[10] (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV.[11] Now, the Exchange proposes to modify the required criteria such that Member would now qualify for Liquidity Provision Tier 1 by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) a Step-Up ADAV[12] (excluding Retail Orders) of the TCV from September 2023 that is equal to or greater than .05%, an ADV[13] that is equal to or greater than 0.50% of the TCV, and a Non-Displayed ADAV[14] that is equal to or greater than 5,000,000 shares; or (3) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Thus, such proposed changes would keep the existing criteria intact as the first alternative, and add two additional alternative criteria, the first involving a combination of Step-Up ADAV, ADV, and Non-Displayed ADAV thresholds, and the second involving a combination of ADAV and Non-Displayed ADAV thresholds, all of which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange.[15] Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 1 will expire no later than March 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of $0.00325 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV; and (2) a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 2 to $0.0032 per share and to modify the required criteria such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) a Step-Up Displayed ADAV of the TCV from September 2023 that is equal to or greater than 0.10% and a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV.[16] Thus, such proposed changes would keep the existing criteria intact and add an alternative criteria (2) that includes a Step-Up Displayed ADAV threshold and a Displayed ADAV (excluding Retail Orders) threshold, which is designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 2 will expire no later than March 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

With respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of $0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.20% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to $0.0030 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving an ADAV that is equal to or greater than 0.175% of the TCV.[17] Thus, such proposed change reduces the TCV threshold as well as the applicable rebate.

With respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of $0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal

[8] *See, e.g.,* the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a base rebate of $0.0032 per share for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity, and the Cboe EDGX Exchange, Inc. (''Cboe EDGX'') equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a base rebate of $0.0032 per share for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity.

[9] The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume'' with a Fee Code of ''B'', ''D'' or ''J'', as applicable, on execution reports.

[10] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[11] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[12] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[13] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[14] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[15] The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B1'', ''D1'' or ''J1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[16] The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 2'' with a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[17] The proposed pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 3'' with a Fee Code of ''B3'', ''D3'' or ''J3'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. The Exchange now proposes modify the required criteria such that a Member would now qualify for such tier by achieving (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.09% of the TCV; or (2) an ADAV that is equal to or greater than 0.06% of the TCV and a Step-Up ADAV from June 2023 that is equal to or greater than 40% of the Member's June 2023 Displayed ADAV.[18] Thus, such proposed change would lower the ADAV threshold in the first alternative criteria (and exclude Retail Orders), and modify the alternative ADAV and Step-Up ADAV thresholds in criteria (2). Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than December 31, 2023. The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 5, the Exchange currently provides an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.075% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 5 to $0.0025 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.06% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.007% of the TCV and a Step-Up Displayed ADAV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV.[19] Thus, such proposed change would lower the ADAV threshold in the existing criteria and add an alternative criteria (2) that includes a Displayed ADAV and a Step-Up Displayed ADAV threshold. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 5 will expire no later than November 30, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

With respect to Liquidity Provision Tier 6, the Exchange currently provides an enhanced rebate of $0.0024 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV that is equal to or greater than 0.007% of the TCV and a Step-Up Displayed ADAV of the TCV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV. As noted above, the criteria under this Tier has been shifted into criteria (2) of Liquidity Provision Tier 5. As such, the Exchange now proposes to eliminate Liquidity Provision Tier 6, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

Lastly, the Exchange is proposing to delete the language on the Fee Schedule that indicates Members that qualify for Liquidity Provision Tiers 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5 or 6 rebate during the following month. This method of providing the rebate under such Tiers was implemented on June 1, 2023,[20] and differed from the previous practice applicable to those tiers (and current practice with respect to all incentives and pricing tiers on the Exchange's Fee Schedule) whereby a Member receives the applicable rebate at the end of the month if it achieved the applicable criteria during that month. The Exchange implemented this method on a trial basis in an effort to encourage Members to increase their liquidity-adding order flow with an added layer of certainty in the rebate they would receive the next month, if applicable. However, the Exchange does not believe that the revised method incentivized Members to achieve Liquidity Provisions 4, 5, or 6 in a manner that was material enough to continue the trial further, and it would rather redirect the associated resources into other programs and tiers intended to incentivize increased order flow or enhance market quality. As such, the Exchange proposes to discontinue this method and provide the applicable rebate under Liquidity Provision Tiers 4 and 5 (as noted above, it is proposing to eliminate Liquidity Provision Tier 6) in the same manner in which it provides rebates under all other pricing tiers.

The purpose of reducing the rebates for executions of Added Displayed Volume under Liquidity Provision Tiers 2, 3 and 5 as proposed, which the Exchange believes in each case represents a modest reduction and remains commensurate with the required criteria as modified, and eliminating Liquidity Provision Tier 6 is for business and competitive reasons, as the Exchange believes that such rebate reductions and tier elimination would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The purpose of modifying the required criteria under Liquidity Provision Tiers 1–5 provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1–5 and the manner in which it is provided remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

Retail Tier

As described above, the Exchange is proposing to provide a base rebate of $0.0032 per share for executions of Added Displayed Retail Volume. In addition, the Exchange is proposing to adopt a new tiered pricing structure applicable to the rebate provided for executions of Added Displayed Retail Volume. Specifically, the Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the Retail Tier, in which the Exchange will provide an enhanced rebate for executions of Added Displayed Retail Volume that meet a certain specified volume threshold on the Exchange. Under the proposed Retail Tier 1, the Exchange will provide an enhanced rebate of $0.0034 per share for executions of Added Displayed Retail Volume for a Member that qualifies for

[18] The proposed pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 4'' with a Fee Code of ''B4'', ''D4'' or ''J4'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[19] The proposed pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 5'' with a Fee Code of ''B5'', ''D5'' or ''J5'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[20] *See* Securities Exchange Act Release No. 97724 (June 14, 2023), 88 FR 40361 (June 21, 2023) (SR–MEMX–2023–10).

the Retail Tier 1 by achieving a Retail Order ADAV that is equal to or greater than 0.07% of the TCV. The $0.0003 per share additive rebate will be provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' orders that constitutes Setter Volume (including a rebate provided under another pricing tier/incentive).[21] The Exchange proposes to provide Members that qualify for the proposed new Retail Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is currently applicable to such executions for all Members.

The proposed Retail Tier is designed to encourage growth in Retail Order flow to the Exchange by providing an additional rebate for executions of Added Displayed Retail Volume, thereby promoting increased liquidity and providing for overall enhanced price discovery and market quality on the Exchange. The Exchange notes that the proposed Retail Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange).[22]

Liquidity Removal Tier

The Exchange currently charges a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of $0.00295 per share for executions of Removed Volume by achieving (1) an ADV that is equal to or greater than 0.50% of the TCV; or (2) a Remove ADV[23] that is equal to or greater than 0.30% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Removal Tier 1 such that a Member would qualify for such tier by achieving (1) an ADV that is equal to or greater than 0.60% of the TCV; and (2) a Remove ADV that is equal to or greater than 0.30% of the TCV.[24] Thus, such proposed change would increase the ADV threshold in the first required criteria and keep the second required criteria intact with no changes except that, as proposed, a Member would be required to achieve both criteria, rather than one or the other. The Exchange is not proposing to change the rebate provided under such tier.

The proposed change to the Liquidity Removal Tier 1 is designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the discounted fee for executions of Removed Volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria under Liquidity Removal Tier 1, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

Non-Display Add Tier 1

The Exchange currently offers Non-Display Add Tiers 1–4 under which a Member may receive an enhanced rebate for executions of Added Non-Displayed Volume by achieving the corresponding required volume criteria for each such tier. Currently, a Member qualifies for Non-Display Add Tier 1, and thus receives an enhanced rebate of $0.0028 per share for executions of Added Non-Displayed Volume under such tier, by achieving: (1) a Non-Displayed ADAV that is equal to or greater than 8,000,000 shares; or (2) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV.[25] The Exchange now proposes to modify Non-Display Add Tier 1 such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 8,000,000 shares. Thus, such proposed change would keep the first existing criteria intact without changes and eliminate the second alternative criteria, which the Exchange believes would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange is not proposing to change the rebate provided under this tier.

The tiered pricing structure for executions of Added Non-Displayed Volume under the Non-Display Add Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, particularly in the form of liquidity-adding non-displayed volume, to the Exchange, thereby contributing to a deeper and more robust and well-balanced market ecosystem to the benefit of all Members and market participants.

NBBO Setter/Joiner Tiers

The Exchange currently offers NBBO Setter/Joiner Tiers 1–2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, ''Setter Volume'') and executions of Added Displayed Volume (other than Retail Orders) that establish a new best bid or offer on the Exchange that matches the NBBO first established on an away market (such orders, ''Joiner Volume''). The Exchange now proposes to modify the NBBO Setter/Joiner Tiers by decreasing the additive rebate provided for executions of Setter and Joiner Volume under NBBO Setter/Joiner Tier 1 and renaming such tier ''NBBO Setter Tier 1'' and eliminating NBBO Setter/Joiner Tier 2, as further described below.

With respect to NBBO Setter/Joiner Tier 1, the Exchange currently provides an additive rebate of $0.0004 per share for executions of Setter Volume for Members that qualify for such tier by achieving an ADAV equal to or greater than 0.10% of the TCV with respect to orders with Fee Code B.[26] Now, the Exchange proposes to reduce the rebate

[21] The proposed pricing for the Retail Tier is referred to by the Exchange on the Fee Schedule under the description ''Added displayed volume, Retail Tier 1'' with a Fee Code of ''Br1'', ''Dr1'' or ''Jr1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[22] *See, e.g.,* the Retail Volume Tiers reflected on the Cboe BZX equities trading fee schedule (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), and the Retail Volume Tiers reflected on the Cboe EDGX equities trading fee schedule (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[23] As set forth on the Fee Schedule, ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[24] The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R1'' assigned on the monthly invoices provided by the Exchange. The Exchange is not proposing to change the fee charged under Liquidity Removal Tier 1 for executions of securities priced below $1.00 per share.

[25] The pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 1'' with a Fee Code of ''H1'', ''M1'' or ''P1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[26] The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

for NBBO Setter/Joiner Tier 1 to $0.0002 per share. The Exchange believes that the additive rebate remains commensurate with the required criteria under such tier, as modified, and is reasonably related to the market quality benefits that such tier is designed to achieve.

With respect to NBBO/Setter Joiner Tier 2, the Exchange currently provides an additive rebate of $0.0002 per share for executions of Setter Volume and Joiner Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.05% of the TCV and a Displayed ADAV with respect to orders with Fee Code B or J[27] that is equal to or greater than 40% of the Member's Displayed ADAV with respect to orders with Fee Code B, D or J.[28] The Exchange now proposes to eliminate NBBO Setter/Joiner Tier 2, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

Finally, after the proposed elimination of NBBO Setter/Joiner Tier 2, only one relevant Tier remains, and that tier only applies to orders with a Fee Code B that establish the NBBO. As such, the Exchange proposes to rename this tier category ''NBBO Setter Tier'', and the relevant Tier 1 ''NBBO Setter Tier 1''.

Adoption of Tape B Volume Tier

The Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the Tape B Volume Tier, in which the Exchange will provide an additive rebate for executions of Added Displayed Volume (excluding Retail Orders) in Tape B Securities (such orders, ''Tape B Volume''). Under the proposed Tape B Volume Tier 1, the Exchange will provide an additive rebate of $0.0001 per share for executions of Tape B Volume for a Member that qualifies for the Tape B Volume Tier 1 by achieving: (1) a Step-Up Tape B ADAV[29] of the Tape B TCV from October 2023 that is equal to or greater than 0.10%(excluding Retail Orders); and (2) a Tape B ADAV that is equal to or greater than 0.25% of the Tape B TCV (excluding Retail Orders). The $0.0001 per share additive rebate will be provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' orders that constitutes Tape B Volume (including a rebate provided under another pricing tier/incentive).[30] Additionally, the Exchange is proposing Tape B Volume Tier 1 will expire no later than April 30, 2024, and the Exchange will indicate this in a note under the Tape B Volume Tier pricing table on the Fee Schedule. The Exchange notes that the additive rebate will not apply to executions of orders in Tape B securities priced below $1.00 per share.

The proposed Tape B Volume Tier is designed to attract displayed liquidity to the Exchange in Tape B securities by providing an additional rebate for executions of Tape B Volume to Members, thereby promoting price discovery and market quality on the Exchange. The Exchange notes that the proposed Tape B Volume Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including similar pricing incentives applicable to Tape B securities.[31]

DLI Additive Rebate

The Exchange currently offers DLI Tiers 1 and 2 in which qualifying Members are provided an enhanced rebate for executions of Added Displayed Volume. The DLI Tiers are designed to encourage Members, through the provision of such enhanced rebates for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, and committing capital to support the execution of orders.[32] The Exchange is not proposing to modify the DLI Tiers at this time, however, the Exchange is proposing to adopt a new additive rebate for executions of Added Displayed Volume applicable to DLI Tier 1 and Liquidity Provision Tier 1 or Liquidity Provision Tier 2 (the ''DLI Additive Rebate''). Specifically, the proposed DLI Additive Rebate would provide an additive rebate of $0.0001 per share for executions of Added Displayed Volume that otherwise qualify for the applicable rebate under Liquidity Provision Tier 1 or Liquidity Provision Tier 2 as well as the applicable criteria under DLI Tier 1,[33] as described more fully below.

First, a Member qualifies for DLI Tier 1 by having (1) an NBBO time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV that is equal to or greater than 0.10% of the TCV.[34] Under Liquidity Provision Tier 1, the Exchange is proposing (as described above) to provide an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) a Step-Up ADAV from September 2023 that is equal to or greater than 0.05% of the TCV, an ADV that is equal to or greater than 0.50% of the TCV, and a Non-Displayed ADAV that is equal to or greater than 5,000,000 shares; or (3) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Under Liquidity Provision Tier 2, the Exchange is proposing (as described above) to provide an enhanced rebate of $0.0032 for executions of Added Displayed Volume for Members that qualify for such tier by having: (1) an ADAV that is greater than or equal to 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) a Step-Up Displayed ADAV of the TCV from September 2023 that is equal to or greater than 0.10% and a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV. Members would

[27] The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market.

[28] The Exchange notes that orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

[29] The Exchange proposes to define ''Step-Up Tape B ADAV'' in the Fee Schedule as the ADAV in Tape B securities as a percentage of the TCV in the relevant baseline month subtracted from the current ADAV in Tape B securities as a percentage of the TCV.

[30] The proposed pricing for the Tape B Volume Tier is referred to by the Exchange on the Fee Schedule under the new description ''Tape B Volume Tier'' with a Fee Code of ''b'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[31] *See, e.g.,* Securities Exchange Act Release No. 73813 (September 11, 2015), 80 FR 55882 (September 17, 2015) (SR–BATS–2015–74) (notice of filing and immediate effectiveness of a proposed rule change related to fees to adopt a Tape B Volume Tier that provides an enhanced rebates for executions of orders in Tape B Securities to BZX (formerly BATS Exchange, Inc.) members that qualify for such tiers by achieving a specified Tape B ADAV threshold).

[32] *See* the Exchange's Fee Schedule (available at: *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule*) for additional details regarding the Exchange's DLI Tiers and DLI Target Securities.

[33] This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description ''DLI Additive Rebate'' with a Fee Code of ''q'' to be appended to the otherwise applicable Fee Code for qualifying executions.

[34] The enhanced rebate provided under DLI Tier 1 is $0.0031 per share for executions of Added Displayed Volume.

qualify for the DLI Additive rebate and by achieving both the criteria under DLI Tier 1 and either Liquidity Provision Tier 1 or Liquidity Tier 2.[35]

The purpose of the proposed DLI Additive Rebate is to encourage Members that consistently quote at the NBBO on the Exchange (*i.e.,* Members that qualify for DLI Tier 1) to also maintain or increase their orders that add liquidity on the Exchange in order to qualify for an additive rebate for executions of Added Displayed Volume, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange notes that the proposed DLI Additive Rebate is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges, including the Exchange, such as pricing tiers that provide a supplemental incentive for firms that achieve a specified volume threshold.[36]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[37] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[38] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [39]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, non-displayed, liquidity-adding and/or liquidity-removing orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the proposed change to reduce the base rebate provided for executions Added Displayed Retail Volume is reasonable because, as described above, such change is designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity, and the proposed new base rebate for executions of Added Displayed Retail Volume remains in competitive with, the base rebates provided by other exchanges in each case for executions of similar orders.[40] The Exchange also believes the proposed base rebate for executions of Added Displayed Retail Volume is equitable and not unfairly discriminatory, as such base rebate will apply equally to all Members submitting Retail Orders to the Exchange.

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that each of the Liquidity Provision Tiers 1–5, Liquidity Removal Tier 1, Non-Display Add Tier 1, NBBO Setter Tier 1, each as modified by the changes proposed herein, as well as the proposed new Retail Tier, Tape B Volume Tier, and DLI Additive Rebate, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, non-displayed, liquidity-adding and/or liquidity removing orders under the required criteria, as applicable, to the Exchange, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume, Added Displayed Retail Volume, Added Non-Displayed Volume, Setter Volume, Added Tape B Volume, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above.

[35] Thus, a Member that qualifies for Liquidity Provision Tier 1 and the DLI Additive Rebate (by achieving the criteria under DLI Tier 1) would receive a rebate of $0.0034 per share (which is the $0.0033 per share rebate under Liquidity Provision Tier 1, as described above, plus the $0.0001 per share DLI Additive Rebate) for executions of Added Displayed Volume, and a Member that qualifies for Liquidity Provision Tier 2 and the DLI Additive Rebate (by achieving the criteria under DLI Tier 1) would receive a rebate of $0.0033 per share (which is the proposed $0.0032 per share rebate under Liquidity Provision Tier 2, as described above, plus the $0.0001 per share DLI Additive Rebate) for executions of Added Displayed Volume.

[36] *See* Securities Exchange Act Release No. 93949 (January 11, 2022), 87 FR 2655 (January 18, 2022) (SR–MEMX–2021–21) (Notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of a DLI Additive Rebate). The Exchange subsequently eliminated the DLI Additive Rebate on July 1, 2022. *See* Securities Exchange Act Release No. 95211 (July 7, 2022), 87 FR 41839 (July 13, 2022) (SR–MEMX–2022–16).

[37] 15 U.S.C. 78f.

[38] 15 U.S.C. 78f(b)(4) and (5).

[39] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[40] *See supra* note 8.

With respect to the proposed changes to eliminate Liquidity Provision Tier 6 and NBBO Setter/Joiner Tier 2, the Exchange believes such changes are reasonable because, as noted above, they would enable the Exchange to redirect the associated resources and funding into other programs and tiers intended to incentivize increased order flow or enhance market quality, and the Exchange is not required to maintain such tiers or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such tiers is also equitable and not unfairly discriminatory because it would apply equally to all Members, in that the incentives would no longer be available for any Member.

Similarly, the Exchange believes the proposed discontinuance of the current method by which it is providing the enhanced rebates under Liquidity Provision Tiers 4 and 5 (each as modified by the proposed changes herein) is reasonable because, as noted above, the Exchange implemented this novel method on a trial basis and determined that it did not incentivize members to meet the applicable Liquidity Provision Tiers to the extent that it believes would support continuation. Further, the method by which the Exchange provides rebates does not affect any criteria or rebates provided under Liquidity Provision Tiers 4 and 5, and as such, modifying the method again does not alter the Exchange's reasonable and competitive pricing structure designed to incentivize market participants to direct additional flow to the Exchange. The Exchange believes the proposal to discontinue this method is also equitable and not unfairly discriminatory because it would apply equally to Members, in that the Exchange would instead provide the rebates to all Members for all pricing tiers under the same methodology whereby a Member is awarded a rebate based on its activity for the current month.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [41] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [42]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed change to reduce the base rebate for executions of Added Displayed Retail Volume would impose any burden on intramarket competition because such change will apply to all Members uniformly, in that the proposed base rebate for such executions would be the base rebate applicable to all Members, and the opportunity to qualify for enhanced rebate, as applicable, is available to all Members. The opportunity to qualify for each of the Liquidity Provision Tiers 1–5, NBBO Setter Tier 1, Non-Display Add Tier 1, and Liquidity Removal Tier 1, each as modified by the changes proposed herein, as well as the proposed new Retail Tier, Tape B Volume Tier, and DLI Additive Rebate, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume and/or quoting requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, the Exchange does not believe that the proposal to eliminate the method by which the Exchange currently provides the enhanced rebate under the Liquidity Provision Tiers 4 and 5 (each as modified by the changes proposed herein), would impose any burden on intramarket competition because such change will apply to all Members uniformly, and the methodology by which the Exchange provides rebates will be the same for all pricing tiers. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.5% of the total market share of

[41] 15 U.S.C. 78f(b)(4) and (5).

[42] *See supra* note 39.

executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, Added Displayed Retail Volume, Added Non-Displayed Volume and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [43] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is ''fierce.' . . . As the SEC explained, ''[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[44] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [45] and Rule 19b–4(f)(2) [46] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2023–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2023–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–30 and should be submitted on or before December 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25549 Filed 11–17–23; 8:45 am]

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[43] *See supra* note 39.

[44] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[45] 15 U.S.C. 78s(b)(3)(A)(ii).

[46] 17 CFR 240.19b–4(f)(2).

[47] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, December 7, 2023, from 9:00 a.m. to 3:00 p.m. ET.

ADDRESSES: The meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public via Microsoft Teams; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line, ''RSVP for December 7, 2023, ACVBA Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line, ''Response for December 7, 2023, ACVBA Public Meeting'' no later than December 1, 2023, or contact Timothy Green, Acting Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

Participants can join the meeting via computer *https://bit.ly/ACVBA-Dec23* or by phone. Call in (audio only): Dial: +1 206–413–7980: Phone Conference 905 930 636#.

All applicable documents will be posted on the ACVBA website prior to the meeting: *https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection--heading-7381.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2024.

Dated: November 9, 2023.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2023–25540 Filed 11–17–23; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 12265]

Privacy Act of 1974; System of Records

AGENCY: Department of State.

ACTION: Notice of a modified system of records.

SUMMARY: This system of records comprises information gathered in connection with the Department's role in providing consular assistance to U.S. citizens overseas, and its role as the United States Central Authority under the Hague Adoption and Abduction Conventions.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of routine uses E, F, G, K, M, N, O, P, R, S, U, V, W, X, Y, Z, AA, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, and NN that are subject to a 30-day period during which interested persons may submit comments to the Department. Please submit any comments by December 20, 2023.

ADDRESSES: Questions can be submitted by mail, email, or by calling Eric F. Stein, the Senior Agency Official for Privacy, on (202) 485–2051. If by mail, please write to: U.S. Department of State; Office of Global Information Systems, A/GIS; 2201 C St. NW, Room 4534; Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Eric F. Stein, at *Privacy@state.gov.* Please write ''Overseas Citizens Services Records and Other Overseas Records, State-05'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Eric F. Stein, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; 2201 C St., Room 4534 NW; Washington, DC 20520 or by calling (202) 485–2051.

SUPPLEMENTARY INFORMATION: The modified system of records notice includes revisions and additions to the following sections: Authority for Maintenance of the System; Purpose(s) of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Routine Uses; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards. In addition, this notice makes administrative updates to the following sections: Record Access Procedures, Contesting Record Procedures, Notification Procedures, and History. This notice is being modified to reflect the Department's move to cloud storage, new OMB guidance, updated contact information, new routine uses compatible with the provision of consular assistance, additional cited authorities, and a notice publication history.

System Name and Number: Overseas Citizens Services Records and Other Overseas Records, State-05.

Security Classification: Unclassified and Classified.

System Location: Department of State, Bureau of Consular Affairs, Overseas Citizens Services, SA–17, 10th Floor, Washington, DC 20522–1710 and overseas at U.S. embassies, U.S. consulates general, U.S. consulates, and U.S. consular agencies. Records may also be located within a government cloud provided, implemented, and overseen by the Department's Enterprise Server Operations Center (ESOC) 2201 C Street NW, Washington, DC 20520.

System Manager(s): Deputy Assistant Secretary for Overseas Citizens Services; SA–17, 10th Floor, Washington, DC 20522–1710 at (202) 485–6044. At overseas locations, the onsite system manager is the Chief of the Consular Section or another Department of State employee with responsibility for consular services as provided by the post in question.

Authority for Maintenance of the System:

(a) 8 U.S.C. 1104 (Powers and Duties of the Secretary of State);

(b) 22 U.S.C. 2656 (Management of foreign affairs);

(c) 22 U.S.C. 3904 (Functions of the Foreign Service, including protection of U.S. citizens in foreign countries pursuant to the Vienna Convention on Consular Relations and providing assistance to other agencies);

(d) 22 U.S.C. 211a *et seq.* (Passport application and issuance);

(e) 22 U.S.C. 2705 (Documentation of citizenship);

(f) 8 U.S.C. 1501–1504 (Adjudication of possible loss of nationality and cancellation of U.S. passports and CRBAs);

(g) 22 U.S.C. 1731 (Protection of naturalized U.S. citizens in foreign countries);

(h) 22 U.S.C. 1732 (Release of citizens imprisoned by foreign governments);

(i) 22 U.S.C. 2671(b)(2)(A)–(B) and (d) (Evacuation assistance and repatriation loans for destitute U.S. citizens abroad);

(j) 22 U.S.C. 2670(j) (Provision of emergency medical, dietary and other assistance);

(k) 22 U.S.C. 4802 (Overseas evacuations);

(l) 22 U.S.C. 2151n–1 (Assistance to arrested citizens) (Repealed, but applicable to past records);

(m) 22 U.S.C. 5503–5511 (Aviation disaster response);

(n) 22 U.S.C. 2715 (Procedures regarding major disasters and incidents abroad affecting United States citizens);

(o) 22 U.S.C. 2715a (Responsibility to inform victims and their families regarding crimes against U.S. citizens abroad);

(p) 22 U.S.C. 2715b (Notification of next of kin of death of U.S. citizens in foreign countries);

(q) 22 U.S.C. 2715c (Conservation and Disposition of Estates);

(r) 22 U.S.C. 4195, 4196 (Official notification of death of U.S. citizens in foreign countries; transmission of inventory of effects) (22 U.S.C. 4195 repealed, but applicable to past records);

(s) 22 U.S.C. 2729 (State Department records of overseas deaths of United States citizens from nonnatural causes);

(t) 22 U.S.C. 4197 (Assistance with disposition of estates of U.S. citizens upon death in a foreign country);

(u) 22 U.S.C. 4198 (Bond as Administrator or Guardian; Action on Bond);

(v) 22 U.S.C. 4193, 4194; 22 U.S.C. 4205–4207; 46 U.S.C. 10308, 10309, 10318 (Merchant seamen protection and relief);

(w) 22 U.S.C. 256 (Jurisdiction of consular officers in disputes between seamen);

(x) 46 U.S.C. 10704–10705 (Responsibility for deceased seamen and their effects);

(y) 22 U.S.C. 4215, 4221 (Administration of oaths, affidavits, and other notarial acts);

(z) 28 U.S.C. 1740, 1741 (Authentication of documents);

(aa) 28 U.S.C. 1781–1785 (Judicial Assistance to U.S. and foreign courts and litigants);

(bb) 28 U.S.C. 1608 (Service on a Foreign State);

(cc) 28 U.S.C. 1696 (Service in International and Foreign Litigation);

(dd) 42 U.S.C. 14901–14954; Intercountry Adoption Act of 2000, (Assistance with intercountry adoptions under the Hague Intercountry Adoption Convention, maintenance of related records);

(ee) 22 U.S.C. 9001–9011, International Child Abduction Remedies Act (Assistance to applicants in the location and return of children wrongfully removed or retained or for securing effective exercise of rights of access);

(ff) 22 U.S.C. 9101, 9111–9114, 9121–9125, 9141, International Child Abduction Prevention and Return Act of 2014 (Reporting requirements, prevention measures, and other assistance on international parental child abduction cases);

(gg) 6 U.S.C. 241, Prevention of International Parental Child Abduction;

(hh) 42 U.S.C. 1973ff–1973ff–6 (Overseas absentee voting);

(ii) 42 U.S.C. 402 (Social Security benefits payments);

(jj) 50 U.S.C. App. 453, 454, Presidential Proclamation No. 4771, July 2, 1980 as amended by Presidential Proclamation 7275, February 22, 2000 (Selective Service registration), and

(kk) 22 U.S.C. 3306 (Services to United States citizens on Taiwan).

Purpose(s) of the System: The primary purpose of this system of records is the furtherance of the Department of State's responsibilities to provide consular protection and services for U.S. citizens overseas, as well as its responsibilities as the United States Central Authority under the Hague Adoption and Abduction Conventions. Such responsibilities relate to matters including but not necessarily limited to: adjudication of claims relating to acquisition (providing Consular Report of Birth Abroad and passport services) or loss of U.S. citizenship; assistance to individuals abroad, including in death cases, loan and destitution cases, welfare and whereabouts cases, prisoner (including prisoner transfer) cases, arrest cases, hostage and kidnapping cases; assistance to minors, including to children who may be victims of abuse, neglect, or who are abandoned or runaways; assistance to individuals involved in child support enforcement proceedings; persons collecting federal benefits overseas; resolution of property, estate, and benefits claims arising under pertinent law; assistance to individuals involved in intercountry adoption cases and in possible or actual international child custody disputes and/or international parental child abduction cases, including the fulfillment of the Department's obligations and duties as the United States Central Authority under the Hague Adoption and Abduction Conventions and related authorities; and oversight of accredited and approved adoption service providers and the designated accrediting entities for intercountry adoption.

Categories of Individuals Covered by the System: Individuals, assisted by or who otherwise interact with the Department of State's Directorate of Overseas Citizens Services (OCS), within the Bureau of Consular Affairs, or by or with consular personnel overseas, who: (a) seek to establish a claim to U.S. nationality or inquire about possible loss of U.S. nationality; (b) apply for U.S. passports and/or Consular Reports of Birth of a U.S. Citizen Abroad; (c) register as U.S. persons living, studying, working, or traveling abroad to include U.S. persons who have demonstrated an intention to travel outside the United States through registering in the Department of State's Smart Traveler Enrollment Program; (d) request and/or receive information or assistance regarding travel abroad; (e) seek assistance from U.S. embassies and/or consulates overseas or from OCS; (f) initiate requests relating to another U.S. citizen's welfare and whereabouts or are themselves the subjects of such requests; (g) are reported as or are otherwise believed to be missing or held hostage overseas; (h) are or may be a victim of a crime abroad; (i) are involved in a case of child welfare abroad, including children who may be victims of abuse, neglect, or who are abandoned or are runaways; (j) are involved in a child support enforcement proceeding; (k) request and/or receive temporary refuge in a U.S. embassy or consulate; (l) request to be and/or are evacuated to the United States or a third country as a result of a civil disorder, natural disaster, or other emergency overseas; (m) request and/or receive assistance, including financial assistance, for repatriation and/or emergency needs; (o) are detained, arrested, or incarcerated overseas and/or their families; (p) request and/or receive notarial or authentication services or judicial assistance; (q) die overseas or are involved in the disposition of a decedent's personal estate; (r) have or assert an interest in property (real or personal) abroad; (s) are living overseas and claim or receive federal benefits; (t) have sought or received assistance or benefits by virtue of having been held hostage overseas or because of their relationship with a person held hostage overseas; (u) vote in U.S. federal and/or state elections while overseas; (v) register with the U.S. Selective Service System while living overseas; (w) are seamen inquiring about consular services; (x) request and/or receive information or assistance regarding the Children's Passport Issuance Alert Program, and/or other international parental child abduction prevention programs; (y) are involved in a possible or actual international child custody dispute and/or international parental child abduction case (covered individuals may include parents and/or guardians, child(ren), and/or any other parties to the case or dispute), including but not limited to a Hague Abduction Convention proceeding for return of or

access to a child; (z) seek to adopt and/or adopt a child from a foreign country; (aa) participate in the intercountry adoption process; (bb) are children who are eligible for intercountry adoption and/or are adopted, and either immigrate to or emigrate from the United States, whether or not such adoption is covered by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Treaty Doc. 105–51, signed May 29, 1993 (Hague Adoption Convention) and its implementing legislation (Intercountry Adoption Act of 2000 (IAA), (42 U.S.C. 14901 *et seq.*)) and related regulations; (cc) seek to provide, have provided, and/or do provide intercountry adoption services, in connection with an intercountry adoption case whether or not such case is covered by the Hague Adoption Convention and the IAA; and (dd) contribute to, or are a subject of, a complaint in the Complaint Registry created pursuant to 22 CFR 96.68 *et seq.* Records may also pertain to individuals who are otherwise involved in the discussion, establishment, execution, or definition of United States foreign policy. The Privacy Act defines an individual at 5 U.S.C. 552a(a)(2) as a United States citizen or lawful permanent resident.

Categories of Records in the System: Emergency Medical and Dietary Assistance loan applications; repatriation and evacuation loan applications; past applications for benefits for hostages and/or their families; seamen services records; welfare and whereabouts records; records related to missing persons and hostage cases; Reports of Presumptive Death Abroad; records of U.S. citizens who register as visiting or residing overseas; records related to federal benefits and property claims; records related to arrest cases, death and estate cases, evacuation cases, prisoner, transfer cases, refuge cases, victims of crime cases, child abuse and neglect cases, abandoned children and runaway cases, ; records related to marriage; records related to publicly available attorney and medical professional lists; records related to judicial assistance cases; records related to intercountry adoption cases (including those covered under the Hague Intercountry Adoption Convention and the Intercountry Adoption Act of 2000); records related to possible or actual international child custody disputes and/or international parental child abduction cases, including but not limited to Hague Abduction Convention proceedings for return of or access to a child; and records related to minors entered into the Children's Passport Issuance Alert Program and other abduction prevention programs. OCS records may also include completed ''Local American Citizens Skills/Resources Survey'' forms; registration cards; interview worksheets; case notes; fingerprint cards; documents of identity; passenger manifests; and various related forms not otherwise stated. Records in the system may also include communications to and from: U.S. embassies, U.S. consulates, and consular agencies; federal, state, and local government agencies; members of Congress; officials of foreign governments; U.S. and foreign courts; U.S. and foreign nongovernmental organizations, including disaster or emergency relief organizations such as the International Red Cross, Red Crescent and others; the subject(s) of the records, their relatives, and other interested parties; records involving other legal matters; and other administrative records. In addition, the system may contain applications for passports and registration as U.S. citizens; Consular Reports of Birth Abroad; Certificates of Loss of Nationality of the United States; and Consular Reports of Death Abroad. Such records are maintained, stored, subject to and preserved as Passport Records, State–26.

Record Source Categories: These records contain information that is primarily obtained from the individual who is the subject of the records. Information may also be obtained from federal, state, local and foreign government entities and nongovernmental authorities and other relevant entities, commercial sources, and individuals in accordance with the fulfillment of consular responsibilities.

Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses:

Records in the Overseas Citizens Services Records and Other Overseas Records system may be disclosed to:

A. The Social Security Administration, Office of Personnel Management, Department of Veterans Affairs, Railroad Retirement Board, Department of Labor, and Department of the Treasury in connection with administration of U.S. federal benefits to persons located abroad;

B. The Federal Aviation Administration and National Transportation Safety Board in connection with individuals traveling abroad and aviation accidents;

C. The Department of Commerce, U.S. Maritime Administration, and U.S. Coast Guard in connection with international commerce, shipping, and seamen;

D. The Department of Health and Human Services, U.S. Public Health Service, and Centers for Disease Control in connection with international travel and public health issues;

E. The Department of Health and Human Services, and its contractors' designees, in connection with repatriation of individuals abroad and child support enforcement;

F. The Department of Justice and its components, including the Drug Enforcement Administration and the Federal Bureau of Investigation (FBI) in connection with the arrest or detention of individuals overseas, prisoner transfer agreements, and in connection with reporting to the National Instant Criminal Background Check System (NICS);

G. The FBI's Victims Services Division in connection with assisting victims of crime;

H. The Foreign Claims Settlement Commission in connection with the adjudication of claims of individuals against foreign governments;

I. The Selective Service in connection with Armed Services registration requirements of individuals;

J. The Department of Defense, Department of Homeland Security, Department of Justice, and the Secret Service in connection with coordinating evacuations abroad;

K. The Department of Defense, or entities whose assistance it has requested, in connection with cases involving active-duty or former service members;

L. The Department of Homeland Security in connection with intercountry adoptions and in connection with processing of immigration and naturalization matters;

M. The Internal Revenue Service to provide current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities, and to provide names, other personal identifying information, and current location of taxpayers who are held hostage, kidnapped, or detained abroad;

N. The Executive Office of the President in connection with consular functions and services;

O. Federal, state, territorial, tribal, local and foreign courts in connection with litigation and related matters, such as inquiries regarding child custody orders;

P. Foreign and domestic airlines and other transportation carriers in connection with assisting individuals in emergency situations, including those

involving aviation or other transportation disasters, individuals who may pose a threat to themselves or others, and international child abduction cases;

Q. Shipping companies when the information is maintained pursuant to the Department's responsibilities under Titles 22 and 46 of the U.S. Code;

R. In connection with assisting individuals during a crisis, including war, civil unrest, or natural disasters, other individuals or entities including: federal, state, territorial, tribal, local, and foreign government authorities, congressional offices, airlines and other transportation carriers; in a crisis situation, information may also be disclosed to international or non-governmental organizations, family members, or medical personnel, or other private individuals or groups in a position to assist;

S. Private citizen liaison volunteers designated by U.S. embassies and U.S. consulates and further defined in Volume 7 of the Foreign Affairs Manual, who serve as channels of communication with other individuals in the local community, to prepare for and assist with evacuations, disasters, and other emergency situations;

T. Foreign-based organizations of private U.S. citizens to assist individuals in evacuations and other emergency situations;

U. Foreign governments including foreign embassies and consulates when the information is requested or provided pursuant to customary international practice, including in compliance with consular notification and access provisions set out in the Vienna Convention on Consular Relations and other matters related to detention and/or arrest by a foreign government; or to assist individuals in evacuations and other emergency situations; or to provide foreign governments with information on an individual's U.S. citizenship status in response to a request;

V. INTERPOL and international and foreign government entities in connection with health, safety, welfare and related matters, including but not limited to intercountry adoption and child abduction cases, custody disputes, cases of runaways and abused or neglected children, family abuse situations, missing persons, and notification of next of kin;

W. U.S. federal, state, territorial, tribal, and local government entities, in connection with health, safety, welfare and related matters, including but not limited to child abduction and intercountry adoption cases, custody disputes, cases of runaways and abused or neglected children, family abuse situations, missing persons, and notification of next of kin;

X. U.S. departments, agencies, and federal interagency bodies who assist in the recovery of, and investigation and prosecution of cases involving individuals taken hostage and/or in armed conflict, kidnapped, or who can provide assistance or support related to detentions abroad, when the detention is covered by or in order to assess applicable of Executive Order 13698, issued on June 24, 2015, and/or by the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act of 2020;

Y. Family members and family-designated representatives when the subject of the record is unable or unavailable to provide written consent to disclosure of information, is involved in an emergency, and the disclosure is for the benefit of the subject;

Z. Family members and family-designated representatives when the subject of the record has disappeared or gone missing, in circumstances where it appears likely that the individual has died, and the release is for the benefit of the individual, his estate or his next of kin;

AA. Members of Congress when the information is requested on behalf of a family member or representative of the individual to whom disclosure is authorized under routine uses Y or Z;

BB. To the subject of a welfare/whereabouts inquiry where the inquirer requests that the Department provide information to the subject for the purpose of establishing contact or passing a message;

CC. Hospitals, shelters, hotels, hostels, study abroad institutions, group travel company offices, and other entities where U.S. citizens needing assistance could be located, to inquire if a subject of a welfare/whereabouts case may be present in their facility;

DD. A minor's educational institution, in cases involving the minor's health, safety, or welfare;

EE. Attorneys, or other professional service providers, when the individual to whom the information pertains is the client of the attorney or other provider making the request, or when the attorney or other provider is acting on behalf of some other individual to whom access is authorized under this notice, or in connection with litigation or administrative proceedings;

FF. Translators at the request of consular personnel or an applicant for consular services abroad, in connection with provision of consular services or other official purposes;

GG. Funeral homes and related service providers in connection with the death abroad of an individual;

HH. The news media in furtherance of a consular function, as determined by the Bureau of Consular Affairs, where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy or to have an undue adverse effect on either the subject or individuals associated with the subject, where there is a legitimate public interest in the information disclosed. Such consular functions may include providing information regarding arrests of U.S. citizens, to provide alerts, assessments, or similar information on potential threats to life, health, or property, or to keep the public appropriately informed of other consular matters;

II. Duly accredited, and Department-authorized, DNA relationship testing facilities in connection with consular services or functions, including adjudication of claims to U.S. citizenship;

JJ. With respect to intercountry adoption and international parental child abduction cases, records may be shared with:

(1) Individuals and entities identified by governments to assist in intercountry adoption and abduction cases, including adoption service providers, Bar Associations, and legal aid services;

(2) biological and adoptive parents, guardians, and children involved in intercountry adoption and abduction cases; and

(3) the Hague Conference on Private International Law;

KK. With respect to international abduction cases:

(1) The National Center for Missing and Exploited Children;

(2) Appropriate foreign government authorities, including central authorities of, and bodies duly accredited in, State Parties to the Hague Abduction Convention, in connection with specific child abduction cases;

(3) members of the International Hague Network of Judges; and

(4) prospective attorneys pursuant to a request for legal assistance;

LL. With respect to intercountry adoption cases:

(1) Central authorities of, and bodies duly accredited in, State Parties to the Hague Adoption Convention, and any other relevant competent authority that has jurisdiction and authority to make decision in matters of child welfare including adoption in a foreign State;

(2) organizations designated by the Department of State as Accrediting Entities in accordance with the IAA in connection with accreditation or

approval or monitoring of adoption service providers; and

(3) adoption service providers in connection with the health, safety, and welfare of participants in intercountry adoptions as well as diplomatic inquiries regarding compliance with the Hague Adoption Convention, the IAA, and compliance with accreditation standards;

MM. Appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

NN. Another federal agency or federal entity, when the Department of State determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

This information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information. Disclosure of passport applications, Consular Reports of Birth Abroad, Certificates of Loss of Nationality of the United States, Consular Reports of Death, and related documentation, is subject to the routine uses specified in this notice as well as to the routine uses set forth in the System of Records Notice for Passport Records, STATE–26.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement (published in Volume 73, Number 136, Public Notice 6290, on July 15, 2008). All these standard routine uses apply to Overseas Citizens Services Records and Other Overseas Records, State-05.

Policies and Practices for Storage of Records: Records are stored both in hard copy and on electronic media. A description of standard Department of State policies concerning storage of electronic records is found here *https://fam.state.gov/FAM/05FAM/05FAM0440.html.* All hard copies of records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only.

Policies and Practices for Retrieval of Records: By individual name, birth date, or other personal identifier if available.

Policies and Practices for Retention and Disposal of Records: Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA) and outlined here *https://foia.state.gov/Learn/RecordsDisposition.aspx.* The retention period for Overseas Citizens Services Records and Other Overseas Records spans from two years to permanent, depending on the specific purpose of the collection and the nature of the information. Some files related to requests for government benefits and miscellaneous facilitative services are destroyed six months or one year after issuance. In some instances, files with historical significance are permanent records. Most files related to American Citizens Services consular assistance cases are stored in the Consular Consolidated Database and are retained for 20 years after closure of the case. More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW; Room B–266; Washington, DC 20520.

Administrative, Technical, and Physical Safeguards: All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Department OpenNet users are required to take the Foreign Service Institute's distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Overseas Citizens Services Records and Other Overseas Records, a user must first be granted access to the Department of State computer system. Employees and contractors are instructed that, as a general matter, any disclosure of Department-maintained information about an individual should be of the minimum amount of information reasonably necessary to accomplish the Department objective and undertaken in accordance with guidance contained in the Foreign Affairs Manual.

Department of State employees and contractors may remotely access this system of records using non-Department owned information technology. Such access is subject to approval by the Department's access program and is limited to information maintained in unclassified information systems. Remote access to the Department's information systems is configured in compliance with OMB Circular A–130 multifactor authentication requirements and includes a time-out function.

All Department of State employees and contractors with authorized access to records maintained in this system of records have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

The safeguards in the following paragraphs apply only to records that are maintained in government-certified cloud systems. All cloud systems that provide IT services and process Department of State information must be specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy.

Information that conforms with Department-specific definitions for FISMA low, moderate, or high categorization are permissible for cloud usage and must specifically be authorized by the Department's Cloud Management Office and the Department of State Authorizing Official. Specific security measures and safeguards will depend on the FISMA categorization of the information in a given cloud system. In accordance with Department policy, systems that process more sensitive information will require more stringent controls and review by Department cybersecurity experts prior to approval. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB regulations, National

Institute of Standards and Technology (NIST) Special Publications (SP) and Federal Information Processing Standards (FIPS) and Department of State policies and standards.

All data stored in cloud environments categorized above a low FISMA impact risk level must be encrypted at rest and in-transit using a federally-approved encryption mechanism. The encryption keys shall be generated, maintained, and controlled in a Department data center by the Department key management authority. Deviations from these encryption requirements must be approved in writing by the Department of State Authorizing Official. High FISMA impact risk level systems will additionally be subject to continual auditing and monitoring, multifactor authentication mechanisms utilizing Public Key Infrastructure (PKI) and NIST 800–53 controls concerning virtualization, servers, storage, and networking, as well as stringent measures to sanitize data from the cloud service once the contract is terminated.

Record Access Procedures: Individuals who wish to gain access to or to amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C St. NW, Room B–266; Washington, DC 20520. The individual must specify that he or she wishes Overseas Citizens Services Records and Other Overseas Records to be checked. At a minimum, the individual must include: full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that Overseas Citizens Services Records and Other Overseas Records include records pertaining to him or her. A request to search Overseas Citizens Services Records and Other Overseas Records, STATE–05, will be directed to the Passport Office when it pertains to passport, registration, citizenship, birth or death records, and any records transferred from STATE–05 to STATE–26. Detailed instructions on Department of State procedures for accessing and amending records can be found at the Department's FOIA website (*https://foia.state.gov/Request/Guide.aspx*).

Contesting Record Procedures: Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C St. NW, Room B–266; Washington, DC 20520.

Notification Procedures: Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C St. NW; Room B–266; Washington, DC 20520. The individual must specify that he/she wishes the Overseas Citizens Services Records and Other Overseas Records to be checked. At a minimum, the individual must include: full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that Overseas Citizens Services Records and Other Overseas Records include records pertaining to him or her. At a minimum, the individual must submit a request that complies with 22 CFR part 171.

Exemptions Promulgated for the System: Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), (k)(3), (k)(4), and (k)(5), certain records contained within this system of records may be exempt from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

History: Previously published at 81 FR 62235.

Eric F. Stein,

Deputy Assistant Secretary, Global Information Services (A/GIS), U.S. Department of State.

[FR Doc. 2023–25571 Filed 11–17–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0048]

Agency Information Collection Activities: Notice of Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 19, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0048 by any of the following methods:

website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melissa Corder, 202–366–5853, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

Background: This program implements 42 U.S.C. 4602, concerning acquisition of real property and relocation assistance for persons displaced by Federal and federally-assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally present in the United States (with certain exceptions). The information collected consists of a certification of residency status from affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will require each person who is to be displaced by a Federal or federally-assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify they are lawfully present in the United States.

Respondents: Federal agencies, 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, local government agencies, persons administering projects or

programs and airport sponsors receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons that are subject to the Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, for file maintenance and for annual statistical reports.

Estimated Average Burden per Response: The respondents electronically submit one statistical report each year. The average burden per statistical report is 16.5 hours. Each instance of file maintenance requires an estimated average of 30 minutes to complete.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 25,000 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 14, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–25537 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT–NHTSA–2023–0037]

Emergency Medical Services Education Agenda 2050: Request for Information

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

ACTION: Reopening of comment period.

SUMMARY: NHTSA published a request for information on October 13, 2023, seeking comments from all sources (public, private, government, academic, professional, public interest groups, and other interested parties) on the planned re-envisioning of the 2000 *EMS Education Agenda for the Future: A Systems Approach.* Due to the limited comments received and some informal feedback indicating that the initial comment period was too short, NHTSA is announcing the reopening of the comment period for the RFI in order to solicit additional comments and request responses to specific questions provided in the document. The comment period for the RFI was originally scheduled to end on October 31, 2023. It will now be reopened and will end on March 31, 2024.

DATES: The comment period for the RFI published on October 13, 2023 at 88 FR 71081 is reopened and extended to March 31, 2024.

FOR FURTHER INFORMATION CONTACT: Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation is available by phone at (202) 868–3275 or by email at *Clary.Mole@dot.gov.*

ADDRESSES: Comments must be submitted by one of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

You may call the Docket Management Facility at (202) 366–9322. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. We will continue to file relevant information in the docket as it becomes available. To be sure someone is there to help you, please call (202) 366–9322 before coming. We will continue to file relevant information in the Docket as it becomes available.

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

SUPPLEMENTARY INFORMATION: On October 13, 2023, NHTSA published a RFI to obtain public comments to inform *EMS Education Agenda 2050,* and request responses to specific questions provided in this document. For convenience purposes, NHTSA is republishing introductory information, background materials and questions from its RFI in this notice.

I. Introductory Information

In 2012, the National EMS Advisory Council (NEMSAC) convened a national roundtable meeting on EMS *Education Agenda for the Future: A Systems Approach.* In a 2014 report on these proceedings, NEMSAC advised that stakeholders at the State and local level had just begun to experience the full impact of the evolution toward a national integrated system of education for EMS personnel. While stakeholders were reticent to move forward with a new education agenda, they did provide feedback about themes that should be considered in the future publication. From the feedback collected at the meeting, NEMSAC developed recommendations to be used in the eventual re-envision of the agenda for EMS. These recommendations are summarized below:

- Educational content should retain the flexibility accorded by the National EMS Education standards, but programs should use nationally recognized evidence-based guidelines to drive local curriculum development.
- The National EMS Information System data, evidence-based research, and practice analyses should be sourced in developing evidence-based guidelines and curriculum.
- Mobile Integrated Healthcare has received considerable attention from the EMS Community. This and other alternative community-based healthcare

delivery models (of the future) should evoke an expanded foundational knowledge and critical thinking capabilities that will poise future EMS practitioners to be able to evolve with the changing healthcare system or rapidly adjust to emerging healthcare crises.

- EMS educators should begin a career in academia with expertise in adult learning, educational theory, curriculum development, and competency evaluation but also possess experiential knowledge in evidence-based care.

In the 10 years since NEMSAC's roundtable meeting, the national EMS education system continued to evolve—especially during the COVID–19 pandemic. In late 2021, the Federal Interagency Committee on EMS (FICEMS) began sponsoring listening sessions to inform a consensus-driven, national report entitled, *FICEMS: EMS and 911 COVID–19 Response White Paper.* This publication cited challenges and solutions collected during stakeholder listening sessions for the EMS education system. Among the challenges, EMS education stakeholders cited scarcity (in some cases deficits) in resources for education, rigidity of curriculum delivery modalities, the increased employer demands on students, and inconsistent or delayed responses to the needs of the national EMS education system as major contributors that led to the breakdown in the EMS workforce pipeline.

Prior to the COVID–19 pandemic, NHTSA published *EMS Agenda 2050: A People-centered Vision for the Future of EMS (Agenda 2050).* This collaborative project set a vision for a people-centered EMS systems that serves every individual in every community across the Nation. Later this year, NHTSA and its partners will begin a new project to develop EMS Education Agenda 2050. This project will not replace but build upon the achievements of the 2000 *EMS Education Agenda for the Future: A Systems Approach* to lead a national conversation around the future vision for EMS Education and EMS as a profession.

II. Background

NHTSA, in partnership with Health Resources and Services Administration, published *EMS Education Agenda for the Future: A Systems Approach* (*Education Agenda*) in 2000. This document was founded on the broad national EMS education system concepts introduced in the *EMS Agenda for the Future* (1996). The *Education Agenda* described a consensus vision of an EMS education system with a high degree of structure, coordination, and interdependence. It proposed a less prescriptive system that offered educators flexibility in creating a student-centered learning environment and a process for accommodating future advancements in technology and medicine. The proposed system maximized efficiency, consistency in instructional quality, and entry level graduate competency by prescribing a high degree of structure, coordination, and interdependence. To achieve this vision, the education system of the future centered on five integrated primary components:

- National EMS Core Content
- National EMS Scope of Practice Model
- National EMS Education Standards
- National EMS Education Program Accreditation
- National EMS Certification

After the *Education Agenda* was published, stakeholders began implementing their respective integrated system components. Almost 25 years later, the national EMS education system has successfully evolved into one that exemplifies both consistency and flexibility. System interdependencies have helped to avoid duplication of effort in curriculum and education program development, evaluating the minimum competencies of graduates, certification and licensing processes, and facilitation of practitioner reciprocity.

In 2020, the EMS education system interdependencies modernized by the *Education Agenda* were tested. Challenges presented by the COVID–19 pandemic forced a variety of adaptations. Traditional education programs reported a lag in students' capabilities of achieving the programmatic competencies requirements for graduation. The lag was attributed to a variety of causes including a focus on pandemic response activities over training and education, employer demands on working students, and the rigidity of in-person, classroom-based education delivery models. After the majority of programs adjusted to the challenges, lags in graduation were cured, and students achieved programmatic competencies at rates similar to those pre-pandemic. The response to the pandemic did not impact education programs only. The impact to EMS agency daily operations was felt as well. During the COVID pandemic, agencies experienced increases in EMS activation and response rates which created additional stressors for student EMS practitioners already working in a high stress job environment but also enrolled in an EMS education program. These stressors were a major contributor to a migration of practitioners away from the EMS workforce. Agencies and organizational stakeholders asserted that it could be education program graduation requirements causing breakdown in the workforce pipeline; however, there were no observed decreases in graduation or certification testing rates. These observations prompt two questions: If graduation and certification testing rates have remained unchanged, why have agencies reported recruitment and retention issues? If graduates are not entering the EMS workforce, where are they finding jobs?

With agencies experiencing increased demand and a deficiency in qualified EMS practitioners to respond to it, service delivery models had to evolve. To bridge the gap in community-based care resources, community paramedicine and mobile integrated healthcare (CP–MIH) service delivery models increased in prevalence, and improvised training programs were used to close new job-specific competency gaps among existing EMS practitioners and individuals in training. Other themes brought to the forefront during the pandemic include addressing healthcare disparities; the use of EMS data as a tool for surveillance and nationwide quality of care improvements; and a greater value to having an EMS workforce that is not only equitable, inclusive, and accessible, but as diverse as the community it serves. These themes, evolving service delivery models, and the subsequent evolution of competencies needed by practitioners suggest that it is time for NHTSA to gather our partners to begin a new conversation about the future of EMS Education and EMS as a profession in the United States.

III. Questions Regarding EMS Education Agenda 2050

Responses to the following questions are requested to help plan the revision of the *Education Agenda.* Please be as specific as possible and as appropriate please provide references.

1. What are the most critical issues facing EMS education system that should be addressed in the revision of the *EMS Education Agenda*? Please provide specific examples.

2. What progress has been made in implementing the *EMS Education Agenda* since 2000?

3. How have you used *EMS Education Agenda*? Please provide specific examples.

4. As an EMS Stakeholder, how might a revised *EMS Education Agenda* be most useful to you?

5. What significant changes have occurred in the EMS education system at the national, Federal, State, and local levels since 2000?

6. What significant changes will impact the EMS education system in the next 25 years?

7. How might the revised *EMS Education Agenda* contribute to enhanced EMS for children?

8. How might the revised *EMS Education Agenda* support and/or promote data-driven and evidence-based improvements in EMS education systems and EMS practitioner practice?

9. How could the revised *EMS Education Agenda* enhance collaboration among EMS systems, health care providers and facilities, public safety answering points, public health, public safety, emergency management, insurers, and others?

10. How could the revised *EMS Education Agenda* be used to promote community sustainability and resilience?

11. How could the revised *EMS Education Agenda* contribute to improved coordination for disaster response, recovery, preparedness, and mitigation?

12. How could the revised *EMS Education Agenda* enhance the exchange of evidence-based practices between national, Federal (and military), State, and local levels?

13. How could the revised *EMS Education Agenda* support the seamless and unimpeded transfer of military EMS personnel to roles as civilian EMS providers?

14. How could the revised *EMS Education Agenda* support interstate credentialing of EMS personnel?

15. How could the revised *EMS Education Agenda* support improved patient outcomes in rural and frontier communities?

16. How could the revised *EMS Education Agenda* lead to improved EMS systems in tribal communities?

17. How could the revised *EMS Education Agenda* promote a culture of safety among EMS personnel, agencies, and organizations?

18. Are there additional EMS attributes that should be included in the revised *EMS Education Agenda*? If so, please provide an explanation for why these additional EMS attributes should be included.

19. Are there EMS attributes in the *2000 EMS Education Agenda* that should be eliminated from the revised edition? If so, please provide an explanation for why these EMS attributes should be eliminated.

20. What are your suggestions for the process that should be used in revising the *EMS Education Agenda*?

21. What specific agencies/organizations/entities are essential to involve, in a revision of the *EMS Education Agenda*?

22. Do you have any additional comments regarding the revision of the *EMS Education Agenda*?

(Authority: 23 U.S.C. 403(b)(1)(A)(iv); 49 CFR 1.95; 501.8)

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2023–25551 Filed 11–17–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On November 7, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. CAMACHO PORCHAS, Jesus Francisco (a.k.a. ''Pilo''), Hermosillo, Sonora, Mexico; DOB 11 May 1980; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. CAPJ800511HSRMRS01 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. CHAVARIN PRECIADO, David Alonso (a.k.a. ''Chava''), Nogales, Sonora, Mexico; DOB 29 Dec 1982; POB Mexico; nationality Mexico; Gender Male; R.F.C. CAPD821229IG4 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. HERNANDEZ MAZON, Sergio Isaias (a.k.a. ''Chavelo''), Calle Estribo 3, Colonia El Rodeo, Nogales, Sonora, Mexico; DOB 23 Aug 1980; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. HEMS800823HSRRZR07 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. MENESES OSPINA, Cristian Julian, Mexico; DOB 31 Dec 1983; POB Ibague, Colombia; nationality Colombia; Gender Male; Cedula No. 14137405 (Colombia); C.U.R.P. MEOC831231HNENSR06 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially

contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. MORENO OROZCO, Oscar Enrique (a.k.a. ''Senry''), Nogales, Sonora, Mexico; DOB 23 Sep 1984; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOOO840923HSRRRS08 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. MORGAN HUERTA, Juan Carlos (a.k.a. ''Cacayo''), Campillo 86, Piso 2, Loc. 214, Nogales, Sonora 84030, Mexico; DOB 25 Sep 1974; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOHJ740925HSRRRN00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. MORGAN HUERTA, Jose Arnoldo (a.k.a. ''Chachio''), Nogales, Sonora, Mexico; DOB 19 Mar 1972; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOHA720319HSRRRR06 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

8. MORGAN HUERTA, Miguel Angel, Sonora 335, Hermosillo, Sonora 83296, Mexico; DOB 27 Mar 1973; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOHM730327HSRRRG07 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

9. MORGAN HUERTA, Jose Luis (a.k.a. ''Gordo''), Nogales, Sonora, Mexico; DOB 17 Feb 1969; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOHL690217HSLRRS02 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

10. MORGAN HUERTA, Martin, Mexico; DOB 06 Apr 1970; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOHM700406HSLRRR00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

11. MURILLO MORGAN, Oscar (a.k.a. ''Chino''), Cerrada Lorenzo de Zavala 147, Colonia Miguel Hidalgo, Culiacan, Sinaloa, Mexico; DOB 01 Apr 1968; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. MUMO680401HSLRRS05 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

12. RAMOS ACOSTA, Alvaro (a.k.a. ''Alvaro Arroz Ramos''), Calle Privada Homero Numero 3, Fraccionamiento El Greco, Nogales, Sonora, Mexico; DOB 31 Mar 1976; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. RAAA760331HSRMCL00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

13. ROMERO WIRICHAGA, Ramiro Martin, Nogales, Sonora, Mexico; DOB 16 Sep 1978; POB Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. ROWR780916HSRMRM03 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

14. COMERCIALIZADORA VILLBA STONE, S.A DE C.V., Nogales, Sonora, Mexico; Jesus Garcia Corona 560, Int. 4, Alamos, Nogales, Sonora 84085, Mexico; Organization Established Date 14 Apr 2014; Organization Type: Cutting, shaping and finishing of stone; Folio Mercantil No. 4288 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, a person sanctioned pursuant to E.O. 14059.

15. CONCEPTOS GASTRONOMICOS DE SONORA, S. DE R.L. DE C.V. (a.k.a. HABANERO'S RESTAURANTE; a.k.a. HABANERO'S RESTAURANTE STEAK WINGS; a.k.a. HABANEROS STEAK WINGS), Nogales, Sonora, Mexico; Calle Ruiz Cortinez 914, Nogales, Sonora 84040, Mexico; Calle Ruiz Cortinez 895, Nogales, Sonora 84030, Mexico; Organization Established Date 03 Apr 2017; Organization Type: Restaurants and mobile food service activities; SRE Permit No. A201703091732456026 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, a person sanctioned pursuant to E.O. 14059.

16. EXPORTADORA DEL CAMPO RAMOS ACOSTA, S. DE R.L. DE C.V., Nogales, Sonora, Mexico; Organization Established Date 07 Sep 2009; Organization Type: Non-specialized wholesale trade; R.F.C. ECR090907HU3 (Mexico); Folio Mercantil No. 3857 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, a person sanctioned pursuant to E.O. 14059.

17. MORGAN GOLDEN MINING, S.A. DE C.V., Hermosillo, Sonora, Mexico; Organization Established Date 14 Nov 2016; Organization Type: Mining and Quarrying; SRE Permit No. A201611021437031501 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having

acted or purported to act for or on behalf of, directly or indirectly, persons sanctioned pursuant to E.O. 14059.

B. On November 15, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. BELL FERNANDEZ, Gilbert Hernan de Los Angeles (a.k.a. ''MACHO COCA''), Moin, Limon, Costa Rica; DOB 02 May 1963; POB Turrialba, Cartago, Costa Rica; nationality Costa Rica; Gender Male; Cedula No. 302600933 (Costa Rica) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: November 15, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–25596 Filed 11–17–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on U.S. Outlying Areas and Freely Associated States, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. ch. 10, that the Advisory Committee on U.S. Outlying Areas and Freely Associated States (hereinafter the Committee) will hold its first inaugural meeting on December 12–December 14, 2023, at the San Juan VA Medical Center in San Juan, Puerto Rico. The meeting sessions will be conducted in the Education Center, Room 2M240, 2nd floor, as a hybrid meeting (in-person and virtual). Virtual attendance will be available via the Microsoft Teams platform. The meeting sessions will begin and end as follows:

Public participation will commence as follows:

Dates	Times	Locations	Open session
December 12, 2023	7:30 a.m.–4:30 p.m. Atlantic Standard Time (AST).	San Juan VA Medical Center, 10 Calle Casia, Education Center, RM 2M240, San Juan, Puerto Rico 00921.	Yes.
December 13, 2023	7:30 a.m.–9:00 a.m. AST	San Juan VA Medical Center, 10 Calle Casia, Education Center, RM 2M240, San Juan, Puerto Rico 00921.	Yes.
December 13, 2023	9:00 a.m.–4:00 p.m. AST	San Juan VBA Regional Office, 50 Carr 165, Guaynabo, San Juan, Puerto Rico 00934 *and* San Juan VA Medical Center, 10 Calle Casia, Education Center, RM 2M240, San Juan, Puerto Rico 00921.	No.
December 13, 2023	4:00 p.m.–4:30 p.m. AST	San Juan VA Medical Center, 10 Calle Casia, Education Center, RM 2M240, San Juan, Puerto Rico 00921.	Yes.
December 14, 2023	9:00 a.m.–12:00 p.m. AST	San Juan VA Medical Center, 10 Calle Casia, Education Center, RM 2M240, San Juan, Puerto Rico 00921.	Yes.

Sessions are open to the public, except when the Committee is conducting a tour of VA facilities. Tours of VA facilities are closed to protect Veterans' privacy and personal information by 5 U.S.C. 552b(c)(6).

The Committee's purpose is to advise the Secretary of Veterans Affairs on covered Veterans. The term covered Veteran is defined here as a Veteran residing in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. The Committee advises on improving VA programs and services to serve covered Veterans better.

On December 12, 2023, the Committee will convene an open session from 7:30 a.m. to 4:30 p.m. AST at the San Juan VA Medical Center (location shown in table above). The agenda will include opening remarks by the Committee Chairman, Committee member introductions; welcoming remarks from the Executive Director, Outreach, Transition and Economic Development; a briefing on the Veterans Benefits Administration's (VBA) efforts to assist covered Veterans, Family Members, Caregivers, and Survivors by the Principal Deputy Under Secretary for Benefits; remarks by the Deputy Secretary of VA; a FACA–101 briefing conducted by the Advisory Committee Management Office; a review of the Committee Charter and Ethics; Veterans Health Administration (VHA) initiatives and updates; and briefings regarding the Foreign Medical Program; Medical Disability Examination Office; Education benefits; Compensation Services; and Transition Assistance.

On December 13, 2023, the Committee will convene an open session from 7:30 a.m. to 9 a.m. AST at the San Juan VA Medical Center (location shown in table above), where the Committee will receive information about the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act (PACT Act); learn about the role of Regional Offices (RO); and receive an Overview of Survivor Benefits. From 9 a.m. to 4:00 p.m. AST, the Committee will reconvene a closed session as it tours the San Juan VBA Regional Office and San Juan VA Medical Center (location shown in table above). Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6). The Committee will reconvene an open session from 4:00 p.m. to 4:30 p.m. AST at the San Juan VA Medical Center for a daily closeout with updates and reminders.

On December 14, 2023, the Committee will convene an open session from 9 a.m. to 12 p.m. AST at the San Juan VA Medical Center. The Committee will discuss observations from the San Juan VBA RO and VHA/VA Medical Center tours; receive updates on National Cemetery Administration Initiatives; receive public comments and hear from VA's Office of Public and Intergovernmental Affairs. The Committee will hold a daily closeout with updates and reminders to address follow-up and action items. The

Committee meeting will adjourn at 12 p.m. AST.

On December 14, 2023, the public is invited to address the Committee during the public comment period, which will be open for 30 minutes from 9:45 a.m. to 10:15 a.m. AST. Individuals will be allowed 3–5 minutes to speak. Additionally, individuals who wish to provide public comments are invited to submit a one-page summary of their comments no later than December 5, 2023, for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Bernard Johnson at *fascommittee.vbaco@va.gov.*

Members of the public may attend open sessions of the Committee meeting in person or virtually. Approximately 10 seats will be available for public stakeholders in attendance. The limited number of seats is due to the meeting room's capacity.

Members of the public who wish to attend virtually can do so by dialing into the Microsoft Teams conference or click here *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjRiYjY0NzQtY2M3Yi00ZWM1LWI0YjUtN2JhOGRlYTA3NjM0%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22ceb1fc63-1a07-4176-8b72-f5cfa7b95dd5%22%7d.*

Meeting ID: 285 717 370 382 or call only 1–205–235–3524.

Meeting ID: 641 975 916#.

Attendees requiring reasonable accommodation should notify Mr. Bernard Johnson at *fascommittee.vbaco@va.gov* no later than December 8, 2023.

Dated: November 15, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–25598 Filed 11–17–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,

No. 222 November 20, 2023

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1301, 1302, 1303, et al.

Supporting the Head Start Workforce and Consistent Quality Programming; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1301, 1302, 1303, 1304, and 1305

RIN 0970–AD01

Supporting the Head Start Workforce and Consistent Quality Programming

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to add new requirements to the Head Start Program Performance Standards (HSPPS) to support and stabilize the Head Start workforce, including requirements for wages and benefits, breaks for staff, and enhanced supports for staff health and wellness. We also propose to enhance several existing requirements and add new requirements to promote consistent quality of services across Head Start programs. This includes proposed enhancements to requirements for mental health services to better integrate these services into every aspect of programs as well as elevate the role of mental health consultation to support the well-being of children, families, and staff. Enhancements are also proposed in the areas of family service, worker family assignments, identifying and meeting community needs, ensuring child safety, services for pregnant women and people, and alignment with State early childhood systems. Finally, we propose minor clarifications to existing standards to promote better transparency and clarity of understanding for grant recipients.

DATES: Consideration will be given to comments received on or before January 19, 2024.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

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 *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lindsey Hutchison, Office of Head Start, Division of Planning, Oversight, and Policy, 202–205–8539, *OHS_NPRM@acf.hhs.gov.* Telecommunications Relay users may dial 711 first.

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I. Background

The Federal Head Start program provides early education and other comprehensive services to children birth to age 5 and during pregnancy in center- and home-based settings across the country. Since its inception in 1965, Head Start has been a leader in providing high-quality services that support the development of children from low-income families, helping them enter kindergarten more prepared to succeed in school and in life. Evidence continues to support the positive outcomes for children and families who participate in and graduate from Head Start programs.[1] The most essential component to accomplishing Head Start's mission of providing high-quality early childhood education and comprehensive services is the workforce of approximately 260,000 staff[2] that provide the services to children and families each day.

However, due to a severe nationwide staffing shortage, Head Start grant recipients across the country are struggling to retain and hire qualified staff to fully enroll classrooms. Early educators provide a critical foundation for children to learn and develop[3] and positively impact children's outcomes.[4] Strong, stable relationships between young children and educators are the key to promoting early development. If programs cannot retain high-quality staff, these relationships are disrupted and outcomes for children and families are negatively impacted.[5] Currently, Head Start programs across the nation are experiencing a severe staff shortage with turnover at its highest point in two decades.[6] For Head Start classroom teachers, the rate of turnover has more than doubled over the past decade.[7]

Low wages and poor benefits—despite increased expectations and requirements for staff—are a key driver of rapidly increasing staff turnover among Head Start teachers and staff. Since 2010, the share of Head Start Preschool teachers with a bachelor's degree increased substantially, but inflation-adjusted salaries for these teachers *decreased* by 2 percent.[8] Research indicates that well compensated early childhood teachers and staff have lower turnover rates and provide higher quality services.[9] For decades, the Head Start program has been subsidized by low paid workers committed to the mission; and the absence of clear Federal requirements for staff compensation has allowed this practice to continue. Urgent regulatory action is needed to stabilize the workforce and ensure the Head Start program can continue to fulfill its mission to promote strong outcomes for children and families. The background context and need for this regulatory action is expanded on further in the following paragraphs.

Through the *Improving Head Start for School Readiness Act of 2007* (the 2007 Reauthorization), which amended the Head Start Act (the Act), Congress required the Department of Health and Human Services (HHS) to ensure children and families receive the highest quality Head Start services possible. In line with this, Congress mandated HHS to revise the Head Start Program Performance Standards (HSPPS). Through the 2007 Reauthorization, Congress also made a number of changes to increase qualifications and other requirements for staff, particularly education staff. This proposed rule responds to the mandate to revise and improve the HSPPS in the Act and makes additional revisions to the HSPPS that were finalized in 2016.

The HSPPS, first published in the 1970s, are the foundation on which programs design and deliver high-quality, comprehensive services to children and their families. The HSPPS set forth the requirements local grant recipients must meet to support the cognitive, social, emotional, and healthy development of children enrolled in the program. They include requirements to provide education, health, mental health, nutrition, and family and community engagement services, as well as requirements for local program governance and Federal administration of the program. In response to requirements in the 2007 Reauthorization, HHS conducted a major revision of the performance standards, through a final rule published in 2016. In line with statutory requirements, the 2016 overhaul of the

[1] Deming, D. (2009). Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start. American Economic Journal: Applied Economics, 1:3, 111–134.; Lipscomb, S.T., Pratt, M.E., Schmitt, S.A., Pears, K.C., and Kim, H.K. (2013). School readiness is children living in non-parental care: Impacts of Head Start. Journal of Applied Developmental Psychology, 31 (1), 28–37.

[2] Source: Head Start 2022 Program Information Report (PIR).

[3] Burchinal, M., Zaslow, M., & Tarullo, L. (eds.) (2016). Quality thresholds, features, and dosage in early care and education: Secondary data analyses of child outcomes. *Monographs of the Society for Research in Child Development. 81(2).*

[4] Choi, Y., Horm, D., Jeon, S. & Ryu, D. (2019). Do Stability of Care and Teacher-Child Interaction Quality Predict Child Outcomes in Early Head Start?, *Early Education and Development, 30*:3, 337–356.

[5] Hamre, B., Hatfield, B., Pianta, R., Jamil, F. (2013). *Evidence for General and Domain-Specific Elements of Teacher-Child Interactions: Associations with Preschool Children's Development.* Child Development, 85:3; Grunewald, R., Nunn, R., Palmer, V. (2022). *Examining teacher turnover in early care and education.* Federal Reserve Bank of Minneapolis.

[6] Source: Head Start 2022 PIR.

[7] Ibid.

[8] Source: Head Start 2010–2022 PIR.

[9] Bassok, D., Doromal, J., Michie, M., & Wong, V. (2021). *The Effects of Financial Incentives on Teacher Turnover in Early Childhood Settings: Experimental Evidence from Virginia.* EdPolicyWorks at the University of Virginia.; Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study.* Center for the Study of Child Care Employment. *https://cscce.berkeley.edu/publications/report/worthy-work-still-unlivable-wages/.;* Whitebook, M., Sakai, L., Gerber, E., & Howes, C. (2001). *Then & Now: Changes in Child Care Staffing, 1994–2000.* Washington, DC: Center for the Child Care Workforce and Institute of Industrial Relations, University of California, Berkeley. *https://cscce.berkeley.edu/publications/report/then-and-now-changes-in-child-care-saffing-1994-2000/.*

performance standards updated and enhanced program requirements to reflect the latest science on child development, while also streamlining requirements where possible, to promote stronger transparency and support programs to deliver more efficient and effective services.

While the 2016 revision to the HSPPS gave careful attention to the type and quality of early education and comprehensive services to be provided to children and their families, as well as requirements for training, professional development, and qualifications for staff, other supports for the Head Start workforce were not included. Indeed, the 2007 Reauthorization and the 2016 revision to the HSPPS resulted in enhanced requirements and responsibilities for program staff, but lacked specific requirements for staff pay, benefits, and other supports for staff wellness necessary to sustain a workforce that could implement those quality provisions. For instance, while qualifications for Head Start preschool teachers have increased dramatically over the past decade (52 percent nationwide had a bachelor's degree in 2010 compared to 71 percent in 2022), inflation-adjusted salary for these teachers *decreased* by 2 percent during this timeframe, from $39,912 in 2010 to $39,096 in 2022.[10] Given the increased expectations and requirements for these staff positions without corresponding increases in wages, it is unsurprising that turnover among classroom teachers as well as other staff positions has increased markedly over the past decade.[11]

For decades, Head Start staff—particularly frontline staff whose daily job responsibilities include working directly with children and families—have received low, stagnant wages, poor benefits, and inadequate supports for health and wellness. Research demonstrates that low wages in the early care and education (ECE) sector are a critical driver of staff turnover.[12] Frontline Head Start staff do important and difficult jobs to promote the development of children participating in Head Start and provide individualized supports to families. A strong relationship between a child and their early educator provides the foundation for all learning and development in ECE settings.[13] Stability and continuity in these relationships are important for high-quality care and for supporting positive developmental outcomes for children.[14] Conversely, a higher rate of turnover among ECE staff is associated with lower quality services and care, as well as poorer developmental outcomes for children.[15] For instance, research has demonstrated that turnover among early childhood educators is linked to worse cognitive and social developmental outcomes in children birth to age 5.[16] Given this, the unprecedented rate of turnover and staff vacancies programs are currently experiencing is concerning and threatens the stability of the national Head Start program and the quality of services it provides, which are a critical resource for hundreds of thousands of families annually.

Head Start and ECE programs nationwide have faced increasing rates of staff turnover, a situation that has been exacerbated drastically by the COVID–19 pandemic. While high staff turnover rates are an issue for the entire ECE sector in the United States, HHS has the authority and opportunity to address the systemic problems driving high turnover in Head Start, and this NPRM proposes policies to address these issues. In 2022, turnover across all staff positions was 19 percent, marking the highest rate of turnover in Head Start in over two decades, and a drastic jump from 13.5 percent in 2019 (prior to the COVID–19 pandemic). While turnover rates were exacerbated by the labor market conditions during the pandemic, the workforce challenges in Head Start remain intractable even after some other industries have regained pre-pandemic employment levels. Because Head Start serves the children and families most in need, it is critical the workforce is well-positioned to be stable as communities recover from the pandemic and during and after future emergencies. Thus, the changes in this proposed regulation are necessary in both the long and short terms. The staffing crisis faced by programs across the nation is an untenable situation for the future of Head Start. This proposed regulation is urgently needed to establish clearer requirements for programs to support and stabilize their workforce, while also serving those children and families most in need of Head Start services. The challenges faced by the workforce—and the need for Federal guardrails in the form of additional regulations—are described in additional detail in the subsequent section, *Workforce Supports: Staff Wages.*

This NPRM will also propose new or enhanced standards to promote more consistent implementation of quality services in other programmatic areas. Enhancements and clarifications to existing standards are proposed in the following areas: family service worker caseloads; procedures for identifying and meeting community needs, including consideration of transportation as a possible barrier to children's attendance; ensuring child safety; services for pregnant women and people; and better aligning with State early childhood systems. We also propose enhancements to requirements for mental health services to integrate mental health more fully into every aspect of program services, as well as elevate the role of mental health consultation to support the well-being of children, families, and staff. Existing requirements in the performance standards in these areas are broad and flexible and have contributed to wide variation in the quality of the implementation of those standards. For instance, some programs have many families (*e.g.,* more than 100[17]) assigned to one family service worker, which reduces the quality of services provided to each family. Many programs have also made decisions to cut transportation services as a primarily budgetary decision, resulting in families in need of services no longer being able to attend the program. Within constrained budgets, programs must make difficult choices about where to invest funds as they strive to provide high-quality Head Start services to as many eligible children as possible. Programs often make decisions aimed at

[10] Source: Head Start 2022 PIR.

[11] Source: Head Start 2010–2022 PIR.

[12] Whitebook, M., Philipps, D., & Howes, C. (2014). Worthy work, still unlivable wages: The early childhood workforce 25 years after the national child care staffing study. *Center for the Study of Child Care Employment.*

[13] Lippard, C.L., La Paro, K.M., Rouse, H.L., Crosby, D.A. (2018). A closer look at teacher-child relationships and classroom emotional context in preschool. *Child Youth Care Forum,* 47, 1–21.; Sabol, T.J. & Pianta, R.C. (2012). Recent Trends in Research on Teacher-Child Relationships. *Attachment and Human Development, 14*(3), 213–231.

[14] Pianta, R. & Stuhlman, M.W. (2019). Teacher-child relationships and children's success in the first years of school. *School Psychology Review, 33*(3), 444–458; Ros Pilarz, A. & Hill, H.D. (2014). Unstable and multiple child care arrangements and young children's behavior. *Early Childhood Research Quarterly,* 29(4), 471–483; Tran, H. & Winsler, A.W. (2011). Teacher and center stability and school readiness among low-income, ethnically diverse children in subsidized, center-based child care. *Children and Youth Services Review, 33*(11), 2241–2252.

[15] Hale-Jinks, C., Knopf, H., & Kemple, K. (2006). Tackling teacher turnover in childcare: Understanding causes and consequences, identifying solutions. *Childhood Education, 82,* 219–226.

[16] Hale-Jinks, Knopf, & Kemple (2006). Tackling teacher turnover in childcare: Understanding causes and consequences, identifying solutions. *Childhood Education, 82,* 219–226.

[17] Source: Head Start 2022 PIR.

enrolling as many children and families as possible and sometimes accomplish this by cutting back on critical areas of services. The enhancements proposed in this NPRM will promote more consistent implementation of program services across a variety of areas, ultimately improving outcomes for enrolled children and their families.

Additionally, since the inception of the 2016 revision to the performance standards, the Administration for Children and Families (ACF) received feedback about areas where standards have not been implemented as intended in the field, or areas where standards are not clear. Therefore, this proposed regulation will also enhance and clarify standards across a variety of areas, codify certain essential best practices, and/or streamline processes for programs implementing the standards, with the goal of further improving the quality of services.

Finally, the changes proposed to the HSPPS are necessary to maintain the quality of the Head Start program and respond to the current early childhood landscape which has changed dramatically since the HSPPS were first published in the 1970s and even since the 2016 overhaul of the HSPPS. As discussed elsewhere, Head Start workforce compensation has not kept pace with inflation or with rising wages in other industries. Further, post-pandemic workforce recovery has been slow and mental and behavioral health issues have risen among children and adults. Head Start programs must adapt and evolve to continue leading the sector in quality programing for children and families. These factors together suggest that regulatory action is warranted and necessary. As explained in detail in this section and throughout the NPRM, stronger workforce supports are necessary to meet the purpose of the Act of promoting school readiness for low-income children. *See* 42 U.S.C. 9831. The Act authorizes the Secretary to modify the program performance standards as necessary, and while the proposals here retain flexibility and discretion that Head Start programs are accustomed to, it is evident by the lagging compensation and other workforce supports that additional guardrails are necessary to maintain quality. Head Start's standards have historically provided a benchmark for high-quality early childhood programs. This NPRM affirms that higher wages and benefits are a key driver of quality in early childhood.

Establishing the new or enhanced standards described below—particularly for the workforce—will promote higher-quality services for children in Head Start programs across the country and are necessary to ensure there is a stable workforce to maintain consistent operations. There will be a substantial cost associated with enacting the proposed standards at current Head Start funded enrollment levels. However, ACF asserts that the policy proposals in this NPRM are necessary for the Head Start program to continue to operate effectively and meet its mission. ACF understands that as a result of these necessary reforms, one potential impact could be a reduction in Head Start slots in some programs in order to ensure the quality of services delivered. The NPRM proposals contain some ability to mitigate the magnitude of slot loss by providing a longer implementation timeline for the proposed wage requirements (see a further discussion on this in the section on *Workforce Supports: Wage Requirements*). While slot loss is a difficult trade-off, a number of programs are already reducing slots because they are forced to close classrooms due to a severe shortage of qualified staff. The current staffing shortage needs to be addressed quickly, as it is imperative that programs be able to retain qualified staff in order to provide high-quality services to children and prepare them for success in elementary school and beyond.[18] Failure to act would threaten the ability for Head Start to continue to recruit and retain effective staff and thereby deliver high-quality services. This action carefully balances the ability of programs to maintain staffing with the goal to serve as many children as possible, while helping stabilize the Head Start program long-term. Further, the establishment of new or enhanced expectations in program quality through the proposed standards described in this NPRM will provide a better foundation for more consistent implementation of high-quality services and provide an opportunity for future Congressional investments in quality improvement.

[18] Barr, A., & Gibbs, C.R. (2002). Breaking the Cycle? Intergenerational Effects of an Antipoverty Program in Early Childhood. *Journal of Political Economy, 130.;* Bauer, L., & Schanzenbach, D. (2016). *The Long-Term Impact of the Head Start Program.* The Hamilton Project, The Brookings Institution.; Deming, D. (2009). Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start. *American Economic Journal: Applied Economics,* 111–134. Montialoux, C. (2016). *Revisiting the impact of Head Start.* IRLE: Institute for Research on Labor and Employment. University of California: Berkeley; Phillips, D., Gormley, W., & Anderson, S. (2016). The Effects of Tulsa's CAP Head Start Program on Middle-School Academic Outcomes and Progress. *Developmental Psychology 52*(8), 1247–61.

II. Statutory Authority To Issue NPRM

We publish this NPRM under the authority granted to the Secretary of Health and Human Services by sections 640(a)(5)(A)(i) and (B)(viii), 641A, 645, 645A, 648A, and 653 of the Act (42 U.S.C. 9835, 9836a, 9840, 9840a, 9843a, and 9848), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134). Under these sections, the Secretary is required to establish performance standards and other regulations for Head Start and Early Head Start programs. Specifically, the Act requires the Secretary to ". . . modify, as necessary, program performance standards by regulation applicable to Head Start agencies and programs . . ."[19] and explicitly directs the Secretary to prescribe eligibility standards, establish staff qualification goals, and assure the comparability of wages. This rule meets the statutory requirements Congress put forth in its 2007 bipartisan reauthorization of the Head Start and addresses Congress's mandate that called for the Secretary to review and revise the performance standards. As discussed throughout the preamble, the performance standards in this proposed rule build upon field knowledge and experience to codify best practices and ensure Head Start programs deliver high-quality education and comprehensive services to the children and families they serve. The Secretary has determined that the modifications to performance standards contained in this regulation are appropriate and needed to effectuate the goals of the performance standards and the purposes of the Act.

III. Section-by-Section Discussion of Proposed Changes

Definition of Head Start and Related Terms (§ 1305.2)

Section 1305.2 establishes definitions for key terms used throughout the HSPPS. These include terms to define programs that operate Head Start services, including *Early Head Start Agency, Head Start Agency,* and *Program.* We begin by explaining proposed changes to clarify these terms and definitions used to describe Head Start and Early Head Start programs. Our proposed changes will also promote more consistent use of these terms throughout the HSPPS and in sub-regulatory policy guidance and training and technical assistance (TTA) materials developed by ACF. The proposed revised terms and definitions described in this section are also used throughout

[19] See section 641A(a)(1) and (2) of the Act.

the rest of the preamble to describe other proposed changes, where applicable.

First, the term *Head Start,* which is not currently defined in § 1305.2, is used inconsistently throughout the current HSPPS, sometimes in reference to a program that serves children ages three to compulsory school age and other times in reference to any type of program authorized under the Act. Consequently, this inconsistency is also present throughout sub-regulatory policy and TTA documents published by ACF. In some cases, a footnote is used to denote that the term *Head Start* refers to programs including Head Start, Early Head Start, and Migrant or Seasonal Head Start (MSHS). In other cases, the phrase ''Head Start and Early Head Start'' is used to represent all types of programs. This inconsistency may be challenging for those who are new to Head Start and troublesome for the field in the general. ACF recognizes the need for consistent and clear terminology in this area.

Therefore, we propose to use the term *Head Start* as an umbrella term that represents all program types authorized under the Act. We propose to add to § 1305.2 a definition for *Head Start* that states that *Head Start* refers to any program authorized under the Head Start Act. Furthermore, we propose to add to § 1305.2 a definition for *Head Start Preschool* so that programs that provide services to children from age three to compulsory school age will be referred to as Head Start Preschool (HSP). In order to maintain consistency across definitions of program types, we also propose adding a definition of *Early Head Start* that refers to a program that serves pregnant women and children from birth to age three.

We propose two other definitional changes to align with the revised terms above. First, we propose to revise the current definition of *Program* by striking ''a Head Start'' and adding ''any funded Head Start Preschool;'' striking ''migrant, seasonal, or'' and replacing with ''Migrant or Seasonal Head Start;'' and striking the word ''program'' and adding ''or other program authorized'' after the comma.

Furthermore, we propose to revise the definition of *Head Start Agency* to add the word ''Preschool'' after ''Head Start'' and replace the words after ''program'' with '', an Early Head Start program, or Migrant or Seasonal Head Start program pursuant to the Head Start Act.'' We further propose to update the usage of these terms as they are used throughout the HSPPS.

We propose to remove the term Early Head Start Agency. We further propose a nomenclature change of ''grantee'' to ''grant recipient''. We do not propose any changes to other relevant terms including *Agency, Delegate Agency, Indian Head Start Agency,* and *Migrant or Seasonal Head Start Program.*

We believe that these revised definitions will provide more clear and consistent terminology when referring to the various program types authorized by the Act and to the entirety of Head Start. Distinguishing Head Start Preschool from Head Start is intended to improve comprehension for both experienced and novice readers of the HSPPS and will codify the colloquial use of the term Head Start.

Note that ACF will not consider comments regarding changes to the HSPPS that purely reflect the updated usage of these terms, such as those throughout Part 1304 Subpart B—Designation Renewal.

Workforce Supports: Staff Wages (§ 1302.90)

Section 1302.90 outlines requirements for personnel policies, including the establishment of personnel policies and procedures, background check procedures, standards of conduct, and communication with dual language learners. In this section, we propose the addition of a new paragraph (e) that outlines four areas of proposed requirements for wages for Head Start staff. First, we describe requirements for programs to make progress to pay parity with kindergarten to third grade teachers, for Head Start education staff who work directly with children as part of their daily job responsibilities. Head Start programs will demonstrate progress to parity by ensuring that Head Start educators are paid at a rate that is at least comparable to preschool teachers in public school settings. Second, we describe requirements to establish or enhance a salary scale, wage ladder, or other pay structure that applies to all staff in the program and incorporates the requirements for pay for education staff. Third, we describe requirements that all staff must receive a salary that is sufficient to cover basic costs of living in their geographic area, including those at the lowest end of the pay structure. Lastly, we describe requirements to affirm and emphasize that the requirements for progress to pay parity should also promote comparability of wages across Head Start Preschool and Early Head Start staff positions. Taken together, implementing this set of standards will stabilize and strengthen Head Start programs across the country by ensuring competitive wages that will promote recruitment and retention of qualified staff and support delivery of high-quality education and comprehensive services for children and families. These proposed standards will also support more equitable, fair wages for a workforce that is largely comprised of women and people of color.

In addition to the authority to modify all program performance standards, the Head Start Act mandates that programs provide compensation that is adequate to attract and retain qualified staff to enhance program quality. *See* 42 U.S.C. 9836A(a) and 42 U.S.C. 9835(a)(5)(i). Section 653 of the Head Start Act, 42 U.S.C. 9848 directs the Secretary to encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience. This section also directs the Secretary to take such actions as are necessary to assure that compensation is not in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of persons providing substantially comparable services as well as *See* 42 U.S.C. 9848. Historically, the Office of Head Start has seen very few instances of excessive compensation for staff, especially for education staff, as evidenced in data from the Program Information Report (PIR). Nothing in these proposed regulations is expected to result in the excess compensation described by Congress in this section. In rare cases, there may be some risk that positions of leadership are paid salaries in excess of compensation paid to similar positions. This risk should be addressed with a program's wage scale. However, this limit is not intended to suppress wages, because, as discussed herein, underpaid staff is a pervasive issue. This section makes it clear that staff salaries should be comparable to compensation in other comparable services, including consideration of salaries paid to elementary school staff. The proposed requirements will help programs design their staff compensation packages and salary scales while still allowing programs some flexibility to determine what works best for their program.

The Need for Wage Requirements

The main goals of Head Start programs are to support the development of children from low-income families and to promote economic self-sufficiency for families through the delivery of high-quality comprehensive services. Head Start's critical mission is carried out every day by the staff working with children and families. Strong, stable relationships between children and their early educators provide the foundation for

children to learn and develop.[20] Indeed, research indicates that high-quality interactions between staff and children in ECE settings relate to stronger developmental outcomes for children.[21] Conversely, high turnover among ECE staff is related to lower quality education and care and poorer outcomes for enrolled children.[22] But, as described previously, Head Start programs nationwide are experiencing a severe shortage of staff across a variety of positions, particularly for those that provide direct services to children and families. The staffing crisis is a result of a confluence of factors, including persistently low, stagnant wages, particularly for frontline staff; a lack of comprehensive benefits; and insufficient supports for staff health and wellness, despite increased need for staff to be more qualified, more competent, and bear more complex job responsibilities. Urgent action and change are needed to stabilize the Head Start workforce to ensure the future viability of Head Start programs nationwide.

The qualifications, expectations, and responsibilities of Head Start staff have significantly increased over the past decade, first with the reauthorization of the Head Start Act in 2007 and then with the revisions to the HSPPS finalized in 2016. This increase in expectations and responsibilities is largely a reflection of advancing science in child development, particularly research on birth to 5 as an important period for brain development and as a critical foundation on which all later development builds.[23] Relatedly, our understanding of what an early educator needs to know and do in order to effectively promote child development during this period has also advanced. A notable report from the National Academies for Science, Engineering, and Medicine provided a framework for knowledge and competencies that early educators need, grounded in the latest science on child development.[24] A subsequent report from the National Academies highlighted the importance of a highly qualified ECE workforce that is well compensated with appropriate professional development supports and career opportunities, in order to provide high quality services to children and families.[25]

However, these increased expectations, qualifications, and requirements have not been followed by increases in compensation. As a result, average wages have remained low and stagnant for years, particularly for staff who work directly with children and families as their primary job responsibility. From 2010 to 2022, the share of Head Start Preschool teachers with a bachelor's degree increased from 52 percent to 71 percent, but inflation-adjusted salaries for these teachers *decreased* by 2 percent during this timeframe, with an average teacher salary of just $39,096 in 2022 compared to $39,912 in 2010.[26] By comparison, in 2022, the average salaries for a preschool teacher in a school-based setting and a kindergarten teacher were $53,200 and $65,120, respectively.[27]

This is a persistent issue not just for Head Start, but also for the broader early childhood field. ECE as a field is comprised primarily of women—including a large share of women of color—doing work that has been historically uncompensated and led to today's workforce being undervalued and underpaid.[28] Additionally, ACF administrative data indicates that just over 60 percent of Head Start education staff (*i.e.,* teachers, assistant teachers, home visitors, and family child care providers) are people of color.[29] It is critical to maintain and strengthen the incredible diversity of our workforce while we seek to fix the historic problem of a reliance on staff committed to the mission of early care and education that has led to an underpaid workforce today. This is especially important since Head Start programs serve a large share of children of color and there are benefits when program staff reflect the communities they serve.[30]

In addition to low compensation, Head Start staff often report insufficient supports for their health and wellness. Even prior to the pandemic, many Head Start programs reported challenges with increasing rates of staff stress and burnout, which is a common experience throughout ECE programs. See the section in this NPRM on *Workforce Supports: Staff Wellness* for a fuller discussion on the poor physical and mental health experienced by Head Start and other ECE staff, as well as proposed new standards for supports to address these issues.

Taken together, low wages and benefits for demanding work, and high rates of stress and burnout, are causing qualified staff to leave for higher paid positions with better benefits in public schools or to leave the early childhood field entirely (*e.g.,* retail, service, food industries).[31] The turnover rate for Head Start classroom teachers doubled over the past decade, from 11 percent in 2010 to an alarming 22 percent in 2022.[32] As a point of comparison, in 2019, turnover for preschool teachers in school-based

[20] Lippard, C.L., La Paro, K.M., Rouse, H.L., Crosby, D.A. (2018). A closer look at teacher-child relationships and classroom emotional context in preschool. *Child Youth Care Forum,* 47, 1–21; Sabol, T.J. & Pianta, R.C. (2012). Recent Trends in Research on Teacher-Child Relationships. *Attachment and Human Development, 14*(3), 213–231.

[21] Nguyen, T., Ansari, A., Pianta, R., Whittaker, J.V., Vitiello, V.E., & Ruzek, E. (2020). The classroom relational environment and children's early development in preschool. *Social Development, 00,* 1–21; Pearlman, M., Falenchuk, O., Fletcher, B., McMullen, E., Beyene, J., & Shah, P. (2016). *A Systematic Review and Meta-Analysis of a Measure of Staff/Child Interaction Quality (the Classroom Assessment Scoring System) in Early Childhood Education and Care Settings and Child Outcomes,* PLOS ONE 11 (12).

[22] Bassok, D., Markowitz, A.J., Bellows, L., Sadowski, K. (2021). New Evidence on Teacher Turnover in Early Childhood. *Educational Evaluation and Policy Analysis, 43*(1), 172–180; Phillips, D., Austin, L.J.E., & Whitebook, M. (2016). The Early Care and Education Workforce. *The Future of Children, 26*(2), 139–158.

[23] Institute of Medicine and National Research Council. (2015). *Transforming the Workforce for Children Birth Through Age 8: A Unifying Foundation.* Washington, DC: The National Academies Press.; National Research Council and Institute of Medicine. (2000). *From Neurons to Neighborhoods: The Science of Early Childhood Development.* Committee on Integrating the Science of Early Childhood Development. Jack P. Shonkoff and Deborah A. Phillips, eds. Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education. Washington, DC: National Academies Press.

[24] Institute of Medicine and National Research Council. (2015). *Transforming the Workforce for Children Birth Through Age 8: A Unifying Foundation.* Washington, DC: The National Academies Press.

[25] National Academies of Sciences, Engineering, and Medicine. (2018). *Transforming the Financing of Early Care and Education.* Washington, DC: The National Academies Press.

[26] Source: Head Start 2010–2022 PIR.

[27] U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2012 Kindergarten Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252012.htm;* U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2011 Preschool Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252011.htm.*

[28] Whitebook, M., Philipps, D., & Howes, C. (2014). *Worthy work, still unlivable wages: The early childhood workforce 25 years after the national child care staffing study.* Center for the Study of Child Care Employment; U.S. Department of Labor (2022). *Bearing the cost: How overrepresentation in undervalued jobs disadvantaged women during the pandemic. https://www.dol.gov/sites/dolgov/files/WB/media/BearingTheCostReport.pdf.*

[29] Source: Head Start 2021 PIR.

[30] Downer, J.T., Goble, P., Myers, S.S., & Pianta, R.C. (2016). Teacher-child racial/ethnic match within pre-kindergarten classrooms and children's early school adjustment. *Early Childhood Research Quarterly, 37,* 26–38.; Markowitz, A., Bassok, D., & Grissom, J.A. (2020). Teacher-child racial/ethnic match and parental engagement with Head Start. *American Educational Research Journal, 57(5),* 2132–2174.

[31] National Head Start Association (NHSA). (2023). *An Update on Head Start's Ongoing Workforce Crisis.* Washington, DC: NHSA.

[32] Source: Head Start 2022 PIR.

settings was about 7.7 percent.[33] This situation has also been exacerbated by the COVID–19 pandemic, during which staff continued to do their utmost to support children and families despite high uncertainty and widespread closure of many aspects of the economy across the country. Across all Head Start staff positions, between 2019 and 2022 turnover jumped by an unprecedented 41 percent, from 13.5 percent to 19 percent.[34]

Overall, these turnover rates are sobering and have grim implications for the viability of Head Start if they are not addressed. Given these rates of turnover, it is unsurprising that many programs are unable to reach full enrollment and/or are impeded from providing high-quality services to enrolled children and families. Inadequate and unstable staffing prevents programs from opening all classrooms, conducting home visits, providing family services, or providing transportation services. In April 2022, about two-thirds of Head Start programs reported experiencing significant enrollment challenges and half of those programs reported that staffing shortages contributed to those challenges, which resulted in many classroom closures.[35] Furthermore, in a 2022 survey of 900 Head Start programs staff conducted by the National Head Start Association, 85 percent of respondents indicated staff turnover was higher than in a typical program year. Almost all respondents (90 percent) said staff shortages forced their programs to close classrooms either permanently or temporarily. Over half (57 percent) of respondents said compensation is the number one reason staff are leaving Head Start programs.[36]

In a November 2022 survey conducted by ACF on a random sample of Head Start grant recipients, the majority reported experiencing shortages with teaching positions (85 percent), assistant teaching positions (86 percent), bus drivers (70 percent), and home visitor positions (60 percent).[37] At least half of those recipients described the staff shortage as very severe for teachers (59 percent), bus drivers (53 percent), and assistant teachers (50 percent).[38] These shortages were forcing the closure of a large portion of classrooms for the majority of respondents, with nearly half reporting difficulty keeping up to a quarter of their classrooms open and another 16 percent reporting difficult keeping up to half of their classrooms open.

This problem is not unique to Head Start, as a recent study in North Carolina found that the most common reason staff leave the early childhood workforce in the State is to make more money.[39] Indeed, a large body of research indicates that low wages in the field of ECE are a strong driver of turnover among staff. And some research indicates that low wages are in fact the strongest determinant of staff turnover, with the lowest paid early educators being twice as likely to leave their jobs compared to the highest paid early educators.[40]

Each staff position in a program is critical to the mission and vision of Head Start, and to the delivery of high-quality services. As summarized previously, strong, stable relationships between young children and their teachers and caregivers provide a critical foundation for children to learn and develop.[41] If programs cannot retain high-quality education staff, these relationships are disrupted and outcomes for children and families are negatively impacted.[42] Research indicates that stable early care and education and strong teacher-child relationships positively influence children's outcomes.[43] In addition, family services staff in Head Start programs play a critical role of engaging and supporting economic stability of families (see the section on *Family Service Worker Family Assignments* for a further discussion on the critical role of these staff). Further, capable, consistent leadership and management staff are necessary to support a high functioning work environment that is positive and welcoming for both direct service staff and children and families. Bus drivers, janitors, and cooks are needed to ensure other important aspects of Head Start services are provided in a high-quality manner, including safe transportation, clean environments, and nutritious meals for children. Without a workforce at all levels that is stable, well-compensated, and supported, Head Start is not able to fully meet its mission of closing the achievement gap and preparing young children from low-income families for entry into kindergarten. Head Start staff work with children that need a range of developmental supports to ensure their success and preparedness for school. In order to break the cycle of poverty for children in Head Start, it is critical that the key change agents in this process (the staff) are compensated appropriately and supported in achieving their mission.

To promote the retention of talented staff at all levels of the program, fill vacancies in a sustainable manner, keep classrooms open, provide the highest quality services, and ultimately promote strong outcomes for enrolled children and their families, staff must receive compensation (wages and benefits) that better reflects their experience and qualification and the value and importance of their critical work, as well as necessary staff wellness supports.[44] Compensation must be competitive with other local employers that draw qualified staff away from

[33] Grunewald, R., Nunn, R., Palmer, V. (2022). *Examining teacher turnover in early care and education.* Federal Reserve Bank of Minneapolis.

[34] Ibid.

[35] Source: Head Start program monthly enrollment data reported internally to OHS. Note that the percent of programs experiencing staffing challenges is likely higher since it was not explicitly requested that programs report this information.

[36] National Head Start Association (NHSA). (2022). *Confronting Head Start's Workforce Crisis.* Washington, DC: NHSA.

[37] Source: OHS administered survey on background checks and the workforce. Percentages exclude positions reported as not applicable.

[38] In the survey, recipients were instructed that ''high'' or very severe indicates the staffing shortage is a severe problem for that position. For example, there are several staff vacancies and/or relatively high turnover, impacting enrollment to a great extent; there are concerns that these issues cannot be resolved within the next few months.

[39] Child Care Services Association, 2020. *childcareservices.org/wp-content/uploads/2020/02/CCSA_2020_TchrTurnover_Brief_Final_Interactive-FINAL.pdf.*

[40] Caven, M., Khanani, N., Zhang, X., & Parker, C. E. (2021). *Center-and program-level factors associated with turnover in the early childhood education workforce (REL 2021–069).* U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Northeast & Islands.; Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study.* Center for the Study of Child Care Employment. *https://cscce.berkeley.edu/wp-content/uploads/publications/ReportFINAL.pdf.*

[41] Burchinal, M., Zaslow, M., & Tarullo, L. (eds.) (2016). Quality thresholds, features, and dosage in early care and education: Secondary data analyses of child outcomes. *Monographs of the Society for Research in Child Development. 81(2).*

[42] Hamre, B., Hatfield, B., Pianta, R., Jamil, F. (2013). *Evidence for General and Domain-Specific Elements of Teacher-Child Interactions: Associations with Preschool Children's Development.* Child Development, 85:3; Grunewald, R., Nunn, R., Palmer, V. (2022). *Examining teacher turnover in early care and education.* Federal Reserve Bank of Minneapolis.

[43] Choi, Y., Horm, D., Jeon, S. & Ryu, D. (2019). Do Stability of Care and Teacher-Child Interaction Quality Predict Child Outcomes in Early Head Start?, Early Education and Development, 30:3, 337–356.

[44] Institute of Medicine (IOM) and National Research Council (NRC). 2015. *Transforming the workforce for children birth through age 8: A unifying foundation.* Washington, DC: The National Academies Press.; Rhodes, H., & Huston, A. (2012). Building the Workforce Our Youngest Children Deserve. Social Policy Report. Volume 26, Number 1. *Society for Research in Child Development.*

Head Start, including local school districts.

There is a clear need for better guardrails in the form of strong Federal requirements in this area. While ACF strongly values local flexibility and has historically allowed for substantial local flexibility in many areas of service delivery, in other areas, the HSPPS are quite prescriptive about what all programs must do. One area in which flexibility is most prominent is in what ACF currently requires for the workforce, including wages, benefits, and other supports for health and wellness. For instance, currently, the HSPPS do not require wage targets or include other compensation requirements for Head Start programs, and national program data show that Head Start grant recipients have historically prioritized serving more children over increasing wages for qualified education staff to be comparable to similar industries that compete for these staff, particularly elementary schools. This is not because programs do not value their staff or want to compensate them fairly.

Without additional appropriations, programs would have to serve fewer children to achieve the necessary cost savings to fund increases in staff compensation. Faced with this difficult decision to either increase staff compensation or serve the same number or more children, Head Start grant recipients have, in general, chosen to serve the same or more children and have chosen to rely on a mission-committed workforce—largely women of color—to bear the cost of this decision. In the fall of 2022, ACF published an information memorandum (IM) encouraging programs to consider restructuring their programs, including reducing the number of children served if needed, in order to permanently increase staff compensation. Since the release of this IM, many programs have responded to this guidance and taken initial steps to improve wages; however, despite this, compensation for Head Start staff still falls far below that in the public education sector. It is clear that regulatory action is needed in order to provide Head Start staff with appropriate compensation and stabilize the program long-term.

The proposed changes to workforce supports will provide clarity to Head Start grant recipients that, in the absence of additional appropriations, slot loss is an acceptable tradeoff in order to improve staff compensation and other supports. Without required compensation targets at the Federal level, severe inequities in the pay of these workers will likely persist. This fact jeopardizes the ability of Head Start programs to provide high-quality services and promote strong outcomes for children and results in classrooms being closed due to staffing shortages.[45]

In other words, failure to address the current severe inequities in pay would likely also have a negative impact on the number of children served due to ongoing and worsening staffing shortages. The proposed regulations in this area will promote consistent expectations in staff pay and once implemented, will substantially increase the ability of programs to recruit and retain qualified staff.

Even at the expense of serving more children in the absence of additional appropriations, these changes are necessary for Head Start programs to enable the children that are served to reach their full potential and attain school readiness. A stable, well-qualified workforce is fundamental to providing high-quality Head Start services to children and families.

We recognize there will be costs associated with enacting the proposed standards at current Head Start funded enrollment levels, however, we note that the number of children currently served in Head Start is well below the funded enrollment level, primarily due to closed classrooms because programs cannot find qualified staff. While programs may need to reduce their funded slots to better reflect their enrollment levels, we expect that many programs will be able to redirect portions of their budget to wage increases and other requirements. As described in this section, we propose a 7-year ramp-up for the full implementation of the new wage requirements. This will allow ample time for programs to prepare for implementation. Due to the long implementation timeline, reductions in the number of children served would not be realized immediately or soon after the effective date of a final rule and would only occur in future years in the absence of additional funding. We understand funded slot loss is a difficult trade-off to consider, but a number of programs are already requesting and enacting slot reductions due to closed classrooms that are a result of staffing challenges, and programs are often proposing to reinvest these cost savings into better wage and other supports for staff. The current staffing challenges and inequities that Head Start is facing make it imperative to act now to establish these requirements that are critical to set the Head Start program on the pathway to stabilizing their workforce that can allow for continued high quality operations of this program.

The following four sections go into more detail on the proposed standards to establish this pathway which include requirements for: (1) progress to pay parity for Head Start education staff with elementary school education staff (§ 1302.90(e)(2); (2) pay scale for all staff (§ 1302.90(e)(1)); (3) minimum pay standard § 1302.90(e)(3); and (4) wage comparability across Head Start Preschool and Early Head Start § 1302.90(e)(4).

Progress To Pay Parity for Head Start Education Staff With Elementary School Education Staff

We intentionally begin with a discussion of the proposed standards in new paragraph § 1302.90(e)(2), *Progress to pay parity for education staff with elementary school staff,* as the rationale for these standards sets the foundation for the rest of the proposed wage standards. This set of proposed standards requires programs to make progress towards achieving pay parity for Head Start education staff with kindergarten through third grade teachers by providing these staff with wages that are at least comparable to those paid to public school preschool teachers. These proposed standards require programs to take into account staff responsibilities, qualifications, and experience when determining these wages. In the context of these standards, Head Start education staff refers to those staff who work directly with children as part of their daily job responsibilities, including lead teachers, assistant teachers, home visitors and family child care providers. There is a body of research evidence to indicate that increasing compensation can help with retention of ECE teachers. Studies of the broader ECE field indicate strategies to improve compensation for ECE professionals can improve employment stability for teachers and reduce turnover (and vice versa, with lower wages linked to higher turnover).[46] For

[45] Source: Head Start program monthly enrollment data reported internally to OHS. Note that the percent of programs experiencing staffing challenges is likely higher since it was not explicitly requested that programs report this information.

[46] Bassok, D., Doromal, J., Michie, M., & Wong, V. (2021). *The Effects of Financial Incentives on Teacher Turnover in Early Childhood Settings: Experimental Evidence from Virginia.* EdPolicyWorks at the University of Virginia.; Caven, M., Khanani, N., Zhang, X., & Parker, C.E. (2021). *Center-and program-level factors associated with turnover in the early childhood education workforce (REL 2021–069).* U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional

Continued

instance, a recent randomized controlled trial study in Virginia found that financial incentives (*i.e.,* bonuses) for early educators of up to $1,500 reduced teacher turnover by 11 percentage points, with even stronger impacts for educators with the lowest levels of compensation.[47] Other research demonstrates that programs that have better compensated staff also have lower turnover and provide higher quality services to children.[48]

Several states, cities, and localities are implementing targeted efforts to strengthen wages for early educators. For instance, San Francisco is newly investing up to $60 million annually to significantly raise wages for educators in eligible ECE programs in the city. The investment will raise annual salaries by anywhere from $8,000 to $30,000 and by 2025, the city aims to ensure all early educators in eligible programs are earning at least $28 per hour.[49] Further, through the formation of the Early Childhood Educator Equitable Compensation Task Force, the District of Columbia recently developed a pay scale for all early educators in DC that will promote pay parity for early educators with elementary teachers, with gradations within the pay scaled based on job role, credentials, and experience.[50] Additionally, New Mexico created two programs to support the early childhood workforce. In 2021, New Mexico created a $1,500 incentive payment plan in recognition of pandemic recovery efforts.[51] Later, in 2022, New Mexico began a new initiative where child care providers are able to apply for funding to increase their staff wages $3 per hour for all staff, and raise the wage floor to $15 per hour for new teachers and $20 per hour for lead teachers.[52]

There are four provisions to the proposed § 1302.90(e)(2). We begin with a proposed standard, § 1302.90(e)(2)(i) that requires programs to make progress towards pay parity for Head Start and Early Head Start teachers with kindergarten through 3rd grade teachers by providing wages that are at least comparable with preschool teachers in the local public schools. The proposed standard requires a program to make measurable progress towards pay parity for Head Start teachers with kindergarten through third grade teachers. To demonstrate progress to pay parity, by August 1, 2031, a program must ensure each Head Start teacher receives an annual salary that is at least comparable to the annual salary paid to preschool teachers in public school settings in the program's local or neighboring school district, adjusted for responsibilities, qualifications, and experience. A program may provide annual salaries comparable to a neighboring school district if the salaries are higher than a program's local school district. We recognize there are many nuances to this proposed standard, and we further explain our intent in the following paragraphs.

First, the standard states that a program must make measurable progress towards pay parity for Head Start teachers with kindergarten through 3rd grade teachers. Teachers in these elementary grades perform similar duties and have similar responsibilities in supporting young children's learning and development—in other words, they provide similar services—as teachers in Head Start programs. It is widely understood in the fields of child development and education that the 'early childhood' developmental stage encompasses birth through age 8.[53] Indeed, a recent well-regarded report from the Institute of Medicine and National Research Council provides a framework and foundation for supporting the workforce that educates and works with children from birth through age 8.[54] The report emphasizes that this developmental time period should be supported holistically by supporting the diverse workforce that works with this age group across sectors. Typically, children are 8 years old when they enter 3rd grade, which aligns with our reference point in the proposed standard for programs to make progress towards pay parity for Head Start teachers with public school teachers through 3rd grade.

Despite the similar roles and responsibilities of Head Start teachers and elementary teachers both working with children in early childhood, these educators have stark differences in average pay. For instance, in 2022 average pay was approximately: $39,096 for Head Start Preschool teachers and $32,373 for Early Head Start teachers,[55] as compared to $53,200 for preschool teachers in school-based settings and $65,120 for public school kindergarten teachers.[56]

This represents alarming pay gaps for Head Start Preschool teachers and Early Head Start teachers compared to both kindergarten teachers and school-based preschool teachers. Furthermore, as discussed previously, many Head Start teachers are highly skilled and credentialed; 71 percent of Head Start Preschool teachers and 23 percent of Early Head Start teachers have at least a bachelor's degree. Further, 94 percent of Head Start Preschool teachers and 45 percent of Early Head Start teachers have at least an associate degree.[57] Head Start programs often report that they compete with public schools to retain teachers, particularly those with bachelor's degrees, as they are well qualified to work in elementary school settings. In fact, Head Start programs in multiple school districts across the country have anecdotally reported to ACF that public schools are intentionally recruiting their most qualified Head Start teachers. Therefore, the first part of this standard sets the goal of making progress toward pay parity for Head Start educators with elementary school educators by

Assistance, Regional Educational Laboratory Northeast & Islands.

[47] Bassok et al. (2021).

[48] Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study.* Center for the Study of Child Care Employment. *https://cscce.berkeley.edu/wp-content/uploads/publications/ReportFINAL.pdf.;* Whitebook, M., Sakai, L., Gerber, E., & Howes, C. (2001). *Then & Now: Changes in Child Care Staffing, 1994–2000.* Washington, DC: Center for the Child Care Workforce and Institute of Industrial Relations, University of California, Berkeley. *https://cscce.berkeley.edu/wp-content/uploads/publications/Then-and-Now.pdf.*

[49] Retrieved from: *https://sfdec.org/mayor-breed-announces-landmark-pay-raise-initiative-for-early-educators-in-city-funded-programs/.*

[50] Early Educator Equitable Compensation Task Force. (March 2022). *Final Report of the Early Educator Equitable Compensation Task Force.* Washington, DC. Retrieved from: *https://lims.dccouncil.gov/downloads/LIMS/49122/Introduction/RC24-0154-Introduction.pdf.*

[51] New Mexico Early Childhood Education and Care Department. (2021). Child Care Workers in New Mexico Eligible for $1,500 Incentive Payments. *https://www.nmececd.org/2021/11/01/child-care-workers-in-new-mexico-eligible-for-1500-incentive-payments/.*

[52] New Mexico Early Childhood Education and Care Department. (2022) Gov. Lujan Grisham announces historic pay increase for early childhood workforce. *https://www.nmececd.org/2022/10/11/gov-lujan-grisham-announces-historic-pay-increase-for-early-childhood-workforce/.*

[53] American Academy of Pediatrics. (2023). Early childhood. *https://www.aap.org/en/patient-care/early-childhood/;* Hyson, M., & Tomlinson, H.B. (2014). The early years matter: Education, care, and the well-being of children, birth to 8. Washington, DC: National Association for the Education of Young Children and Teachers College Press.

[54] Institute of Medicine (IOM) and National Research Council (NRC). 2015. *Transforming the workforce for children birth through age 8: A unifying foundation.* Washington, DC: The National Academies Press.

[55] Source: Head Start 2022 PIR.

[56] U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2012 Kindergarten Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252012.htm;* U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2011 Preschool Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252011.htm.*

[57] Source: Head Start 2022 PIR.

narrowing the pay gap between these groups. The proposed standard also requires ''measurable progress'' towards pay parity, which is discussed further below in the context of proposed § 1302.90(e)(2)(iv). Finally, this language also aligns with section 653(a) of the Act, which requires that program staff are not paid in excess of the average rate of compensation in the area where the program is carried out to a substantial number of persons providing comparable services.

Next, assuming publication of a final rule in 2024, this standard provides approximately a 7-year implementation window for programs to meet this requirement by August 2031, aligning with the approximate start of a new program year. We believe this 7-year window is necessary to allow programs sufficient time to thoughtfully plan and prepare for implementation of this standard, without impacting currently enrolled students. We recognize it will require significant effort on the part of programs to establish and revise their pay structures to align with these proposed requirements (and a requirement to establish or update an overall pay structure is discussed further in the next section). The 7-year implementation timeline also creates an opportunity for future potential Congressional investment in Head Start.

However, we recognize that there are a range of possible options regarding the effective dates for the proposed standards to improve staff wages. We request public comment on our proposed effective date for this standard for progress to pay parity for Head Start teachers.

Next, the proposed standard (§ 1302.90(e)(2)(i)) clarifies that programs must demonstrate they are making progress to pay parity by ensuring that the salary paid to Head Start Preschool and Early Head Start teachers is at least comparable to the salary paid to preschool teachers in public school settings. The goal of this phrasing is to clarify that, in order to demonstrate sufficient progress on pay parity for Head Start teachers with kindergarten through third grade teachers, programs must ensure Head Start teachers receive wages that are, on average, comparable with those paid to preschool teachers in elementary and secondary schools, who are educating young children. This standard serves as a progress marker towards ultimately achieving full pay parity for Head Start teachers with kindergarten through third grade teachers. As noted previously, preschool teachers in school-based settings earn an average annual salary of $53,200,[58] which is $14,000 more than the average salary of $39,096 for Head Start Preschool teachers and nearly $21,000 more than the average salary of $32,373 for Early Head Start teachers.[59]

The target comparison of preschool teachers in public school settings is intended to represent substantial progress towards parity with K-third grade public school elementary teachers. Specifically, we intend the benchmark of preschool teacher annual salaries in public school settings to represent about 90% of the amount of kindergarten teacher annual salaries, for those with comparable qualifications.[60] Achieving wages for Head start teachers that are at least comparable to salaries for preschool teachers in school-based settings will provide a significant boost in wages for this well-qualified but underpaid workforce.

Next, the proposed standard, § 1302.90(e)(2)(i), states that wages for Head Start teachers should be comparable to preschool teachers in school-based settings in the program's local school district. However, research indicates that teachers in public schools that serve a high proportion of children living in poverty are paid significantly lower on average compared to teachers in low-poverty schools.[61] To avoid unintentionally suppressing wage growth of Head Start teachers by requiring a comparison to public school teachers in only one school district, who may be underpaid, we include an additional sentence in § 1302.90(e)(2)(i) that allows a program to provide annual salaries comparable to a neighboring school district if the salaries are higher than a program's local school district. This sentence intentionally allows a Head Start program the flexibility to consider salaries of preschool teachers in public schools across multiple school districts in their geographic area when determining what benchmark to use for teacher salaries, if those school districts offer higher salaries. We recognize some programs may be located in geographic areas where there is not a sufficient number of preschool teachers in public schools in their local or neighboring school district to benchmark to, in terms of comparable wages. Below, we discuss proposed § 1302.90(e)(2)(iii) that describes what programs should do in these instances, to develop an appropriate wage comparison. We request comment on any barriers that Head Start programs may face in identifying a comparable population of school-based preschool teachers for the purposes of benchmarking wages and whether the options described below for an alternative method to benchmark to preschool wages are sufficient to overcome any potential challenges. We also request comment on whether the benchmark of annual salaries paid to public school preschool teachers is an accurate reflection of approximately 90% of annual salaries paid to kindergarten teachers with comparable qualifications.

Finally, the proposed standard, § 1302.90(e)(2)(i), requires a program to consider responsibilities, qualifications, and experience of the teachers when determining salaries. This aligns with recommendations from ECE research experts, which suggest that wages for the ECE workforce should be reflective of job role, experience, and education.[62] This portion of the proposed standard acknowledges that responsibilities and expectations of a job position should be a key factor in determining wages. In general, an individual in a given position with a more advanced degree or credential should be compensated more than an individual in the same position with a lower degree or credential, all other factors being equal. However, degrees or credentials are not the only important factor to consider when determining salaries. Experience is also key, particularly in the field of ECE where many teachers have years of experience, but may have never attained a bachelor's degree, for instance.[63] Further, research indicates that degrees are not the only thing that matters for

[58] U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2011 Preschool Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252011.htm.*

[59] Source: Head Start 2022 PIR.

[60] This analysis uses BLS average annual salaries as wage targets. However, since the BLS national average for kindergarten teacher salaries ($65,120) includes all kindergarten teachers, of which approximately half have a master's degree or higher, adjust this annual salary to reflect the target salary for a teacher with a bachelor's degree ($58,608) guided by salary differences observed in National Center for Education Statistics data (*https://nces.ed.gov/surveys/ntps/*). The BLS reported annual salary for preschool teacher in school settings ($53,200) is therefore approximately 90% of the annual salary for kindergarten teachers with a bachelor's degree ($58,608).

[61] Garcia, E., & Weiss, E. (2019). *Low relative pay and high incidence of moonlighting play a role in the teacher shortage, particularly in high-poverty schools. The third report in 'The Perfect Storm in the Teacher Labor Market' series.* Washington, DC: Economic Policy Institute.

[62] *https://cscce.berkeley.edu/workforce-index-2020/state-policies-to-improve-early-childhood-educator-jobs/early-childhood-educator-workforce-policies/compensation-financial-relief/.*

[63] Kini, T. & Podolsky, A. (2016). *Does Teaching Experience Increase Teacher Effectiveness? A Review of the Research.* Palo Alto: Learning Policy Institute. Retrieved from: *https://learningpolicyinstitute.org/product/does-teaching-experience-increase-teacher-effectiveness-review-research.*

determining teaching quality in ECE; experience and other supports such as professional development, coaching, and training, are also critically important for high quality teaching.[64] Therefore, the proposed standard elevates the importance of considering an individual's experience when establishing wages, in addition to qualifications.

We recognize that qualifications and experience intersect in complex ways when determining wages. For instance, we would expect that a teacher with a bachelors who is new to the ECE field would likely earn a higher wage than a teacher with an associate degree who is also new to the field. However, we would expect that a teacher with an associate degree and many years of experience in ECE may likely earn a higher wage than a teacher with a bachelor's degree who is brand new to the field. This is consistent with section 653 of the Act which encourages programs to consider experience when determining salaries. The phrasing of the proposed requirement provides flexibility to programs to determine how they consider responsibilities, qualifications and experience when determining salaries. Our goal here is to provide programs with flexibility to determine wages that make the most sense for their program structure, while also balancing experience and qualifications.

Next, we turn to the second provision of § 1302.90(e)(2). Here we propose a new standard in § 1302.90(e)(2)(ii) that provides a deadline of August 1, 2031, for programs to make measurable progress towards pay parity for all other education staff who work directly with children as part of their daily job responsibilities. To demonstrate this, a program must provide these staff an annual salary that is at least comparable to salaries for Head Start teachers as described above, but adjusted for role, responsibilities, qualifications, and experience. This proposed standard is intended to apply to education staff other than lead teachers whose primary job is to work in classrooms or homes with children, including assistant teachers, home visitors, and family child care providers. Once implemented, this standard would significantly raise wages for these positions. We request public comment on whether there are other education staff positions besides these who work regularly with children to whom this standard should apply.

To align with the prior standard on progress to pay parity that applies to Head Start teachers, this standard will also go into effect in August of 2031, approximately 7 years after publication of the final rule. We request public comment on our proposed effective date for this standard for progressing towards pay parity for Head Start education staff.

The average salaries for these education staff are far below what they could earn with other employers and do not reflect the qualifications they hold or the important work they do. In 2022, average salaries for these education staff were as follows: $25,570 for assistant teachers; $38,510 for home visitors; and $40,902 for family child care providers.[65] Meanwhile, 52 percent of home visitors have a bachelor's degree,[66] and 88 percent of assistant teachers have at least a Child Development Associate (CDA) or comparable credential.[67] These education staff provide critical services in classroom- and home-based settings in Head Start programs.

Similar to lead teachers, without qualified staff in these positions, the quality and availability of classroom- and home-based services are impacted, which in turn negatively impacts outcomes for children. Home-based services in particular—through home visiting or family child care—are provided to a large share of infants and toddlers in Early Head Start. In addition, assistant teachers play critical roles in Head Start Preschool classrooms to support children's learning and development alongside lead teachers. As previously noted, all classroom staff, regardless of position, build strong relationships with children that are crucial to healthy child development and can be damaging when disrupted. Retaining assistant teachers is as beneficial to the program—and to the children enrolled—as retaining lead teachers. Further, promoting stronger wages for assistant teachers can help support career pathways so that they eventually may become lead teachers or take on other positions in programs. Therefore, in the context of these proposed standards, we expect that education staff with less experience or qualifications will still receive significant compensation increases, and that these increases will be reflective of the important jobs they perform.

The phrasing of proposed standard § 1302.90(e)(2)(ii) requires that a program provide an annual salary to these other education staff positions that is comparable to salaries described in the prior provision in proposed paragraph (e)(2)(i), but is adjusted for role, responsibilities, qualifications, and experience. As summarized previously, the intention of this phrasing is to acknowledge that education staff in different positions, with different qualifications, and/or with different experience may receive different levels of compensation, relative to lead teachers. However, it is our intention that salaries for these other education positions with varying qualifications and experience are *not* simply compared to and set at the same level as salaries for other potentially lower paid staff in school-based settings, such as teacher aides or paraprofessionals. Rather, salaries for Head Start teachers established under proposed § 1302.90(e)(2)(i) should serve as an *anchor* for salaries for other education staff captured by the standard proposed in (e)(2)(ii). This is best described with a few concrete examples.

For instance, a home visitor and a lead teacher could reasonably be considered to hold similar important responsibilities within the context of the Head Start program; both play a primary role in supporting the development of enrolled children. Therefore, if a home visitor holds a bachelor's degree and similar experience as a lead teacher with a bachelor's degree, the program should consider compensating this home visitor at a similar level as a lead teacher. However, if a home visitor holds an associate degree and a few years of experience, the program could reasonably compensate the home visitor at an amount below an experienced teacher with a bachelor's degree, with an expectation of salary growth as the home visitor gains experience. As another example, an assistant teacher and a lead teacher could be reasonably considered to hold different levels of responsibilities within the Head Start classroom. Therefore, a program could reasonably choose to compensate an assistant teacher with an associate degree below that for a lead teacher with an associate degree.

Taken together, we do expect that wages will vary for education staff across the complex intersections of role, responsibilities, qualifications, and experience. However, it is also our

[64] Kini, T. & Podolsky, A. (2016). *Does Teaching Experience Increase Teacher Effectiveness? A Review of the Research.* Palo Alto: Learning Policy Institute. Retrieved from: *https://learningpolicyinstitute.org/product/does-teaching-experience-increase-teacher-effectiveness-review-research;* Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M., Espinosa, L., Gormley, W.T., Ludwig, J., Magnuson, K., Phillips, D., & Zaslow, M. (October, 2013). *Investing in our future: The evidence base on preschool.* Society for Research in Child Development.

[65] Source: Head Start 2022 PIR.

[66] Source: Head Start 2019 PIR; this was the last year of PIR that collected data on the number of home visitors with a bachelor's degree.

[67] Source: Head Start 2022 PIR.

intention that programs ensure wage scales are not drastically different between education staff positions based solely on degrees or credentials held, particularly for positions that have the same or similar responsibilities in the program. Programs must also consider experience when determining pay for education staff.

Next, we propose a new standard § 1302.90(e)(2)(iii) that provides an allowance for programs to use an alternative method for determining the comparable preschool salaries in specific circumstances. More specifically, if there is not a sufficient number of comparable public school preschool teachers in the program's local or neighboring school district, this proposed standard allows a program to use an alternative method to implement the requirements in clause (i) and (ii) of § 1302.90(e)(2) to determine appropriate comparison salaries. The alternative method must be approved by ACF. This standard acknowledges that some programs are located in areas which do not have, or have a small number of, preschool teachers in school-based settings in local or neighboring school districts. In these cases, we recognize that it may not be possible to obtain a reliable estimate of comparison salaries. Programs are still required to make measurable progress toward pay parity in such circumstances, but this standard allows for an alternative approach to anchor comparison salaries. The proposed standard would require programs to use an alternative method for determining comparison salaries, and this method must be approved by ACF. For instance, this could include using salaries from preschool teachers in school-based settings in a geographically and/or socioeconomically similar area. Or programs may consider increasing salaries to a specified percentage of kindergarten to third grade teacher salaries in the local school district. ACF may provide guidance on pre-approved alternative methods to facilitate implementation of this standard where applicable. We request comment on what type of guidance or technical assistance Head Start programs need to develop an alternative method in areas without school-based preschool teachers in local school districts.

Finally, as referenced previously, ACF expects that programs will make measurable progress towards pay parity for Head Start education staff with kindergarten to third grade teachers. The fourth and final provision of § 1302.90(e)(2) proposes a new standard that requires programs to examine their progress to pay parity by regularly tracking data on how wages paid to their education staff compare to wages paid to preschool through third grade teachers in their local or neighboring school district. The intention of this standard is for programs to regularly track and examine pay gaps between Head Start education staff and teachers in comparable settings. The comparison to preschool teachers serves as a way to track in alignment with the proposed standards on progress to pay parity as described above. Programs should capitalize on existing data sources to implement this requirement to track wage data. Many, if not all, programs have internal data which they can leverage to track wages paid to their education staff. Additionally, to track wages for preschool through third grade teachers in the local or neighboring school district, programs can leverage publicly available information from these settings. Programs may already have methods for obtaining this information as part of their wage comparability surveys, or through existing partnerships with local education agencies and local school-based preschool programs. Regular tracking would ideally occur on an annual basis at minimum so that programs are aware of their progress, or lack thereof, in closing pay gaps and can make necessary adjustments.

Pay Scale for All Staff

Here we discuss the proposed changes to the new § 1302.90(e)(1), *Pay scale.* There has been growing interest in the field to implement wage ladders or pay scales that promote more competitive wages for the ECE workforce. As summarized previously, the District of Columbia (DC) recently developed a pay scale for all early educators in DC that will promote pay parity for early educators with elementary teachers, with gradations within the pay scaled based on job role, credentials, and experience.[68] Alabama and a handful of other states have pushed forward to require pay parity for staff across all preschool programs in the State with K–3 elementary staff, including the same starting salary and salary schedule.[69] A few cities, such as New York City and San Antonio, have also pushed forward with policies for pay parity for preschool staff with elementary staff.[70] We propose three provisions to § 1302.90(e)(1) to describe requirements for pay scales in Head Start programs.

In the first provision, § 1302.90(e)(1)(i), we propose a new requirement that, by August 1, 2031, programs must implement a pay scale, salary scale, wage ladder, or other pay structure that applies to all staff in the program. This pay structure must incorporate the requirements in paragraphs (2), (3), and (4) of § 1302.90(e) and promote salaries that are comparable to similar services in relevant industries in their geographic area. The pay structure must consider, at a minimum, responsibilities, qualifications, and experience relevant to the position, and schedule or hours worked. The intention of this standard is to ensure a program's pay structure promotes competitive wages for all staff in the program, in addition to education staff. The proposed § 1302.90(e)(1)(i) contains many components; we explain each here in further detail.

First, we intentionally structured this standard with the same implementation timeline—August 1, 2031—as the proposed standards for progress to pay parity for education staff, § 1302.90(e)(2), that were described previously. We recognize it is critical for program planning and implementation purposes for these standards to go into effect within the same timeframe. We request public comment on our proposed effective date for this standard.

Next, we specify that a program must develop or update a pay structure for program staff salaries. Since ACF believes the majority of programs already have a pay structure of some kind in place for employees, such as a pay scale, salary schedule, or wage ladder. In cases where a program does not have a pay structure in place, a program must establish one under this proposed requirement.

For the majority of programs that already have an established pay structure, they must update it to reflect the requirements of the proposed § 1302.90(e)(1)(i). Next, we specify that the program's pay structure must incorporate the requirements in newly proposed § 1302.90(e)(2), (e)(3), and (e)(4), as well as wages for all other staff

[68] Early Educator Equitable Compensation Task Force. (March 2022). *Final Report of the Early Educator Equitable Compensation Task Force.* Washington, DC. Retrieved from: *https://lims.dccouncil.gov/downloads/LIMS/49122/Introduction/RC24-0154-Introduction.pdf.*

[69] *https://cscce.berkeley.edu/workforce-index-2020/state-policies-to-improve-early-childhood-educator-jobs/early-childhood-educator-workforce-policies/compensation-financial-relief/.*

[70] CityHealth & NIEER (n.d.); McLean, C., Dichter, H., & Whitebook, M. (2017). *Strategies in Pursuit of Pre-K Teacher Compensation Parity: Lessons From Seven States and Cities.* Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley and New Brunswick, NJ: the National Institute for Early Education Research. Retrieved from *https://cscce.berkeley.edu/wp-content/uploads/publications/Strategies-in-Pursuit-of-Pre-K.pdf.*

in the program. As summarized previously, proposed § 1302.90(e)(2) outlines wage requirements for Head Start teachers and other education staff. Newly proposed paragraphs (e)(3) and (e)(4) are discussed in further detail in subsequent sections and encompass requirements for a pay floor and for wage comparability across Head Start Preschool and Early Head Start staff positions.

The proposed § 1302.90(e)(1)(i) specifies that the program's pay structure must promote salaries that are comparable to similar services in relevant industries. This phrasing is the main thrust of this proposed requirement. Overall, we intend for this standard to improve wages for a variety of staff positions in the program, in addition to improved wages for education staff specified in § 1302.90(e)(2). As discussed previously, education staff are not the only positions for which programs are struggling to recruit and retain staff. Programs report difficulty filling other positions including family services staff, bus drivers, janitors, cooks, mid-level managers, and center directors. While not all these staff necessarily leave Head Start due to low wages, many do. It is critical to retain high-quality staff across these positions in order to maintain a high functioning program.

Therefore, ACF expects programs will thoroughly consider wages of comparable industries to assess whether and how wages for various positions in their program should be improved. For instance, a family services staff member who holds a bachelor's degree in social work or another related field could be considered to provide comparable services to a family outreach or engagement specialist in a public school setting. If a health services staff member holds a nursing degree, this staff member could be comparable to a nurse with a similar degree providing similar services in other healthcare settings. In addition, as programs consider how to restructure their pay scales to provide significantly higher raises for education staff as described in § 1302.90(e)(2), we expect that wages for most other staff positions will need to be lifted as well, to avoid the unintended consequence of wage compression.

Finally, in establishing or updating their pay scale, proposed § 1302.90(e)(1)(i) requires that a program consider responsibilities, qualifications, and experience relevant to the position, as well as schedule or hours worked. We believe these factors are important to consider when establishing or updating a pay scale, for the same reasons as described previously for proposed § 1302.90(e)(2). Here we specify that the responsibilities, qualifications, and experience considered when establishing wages should be relevant to the position. This specification is meant to clarify that a program does not necessarily have to consider qualifications that are irrelevant to a given position, when determining wages. For instance, if a janitor holds a master's degree and the program determines this position does not require a degree, the program does not have to compensate that individual at a similar rate as other staff members in the program who hold master's degrees that are relevant to their job role and responsibilities.

Next, we turn to the second provision of § 1302.90(e)(1). Here we propose a new paragraph § 1302.90(e)(1)(ii) that requires, after August 1, 2031, programs to review their pay structure at least once every 5 years to ensure it continues to provide competitive wages for staff reflective of the requirements described previously, without causing undue burden by requiring it more frequently. By requiring this at least once every 5 years, it is our intention that grant recipients can align this review of their pay structure with other planning and strategic activities as part of their 5-year grant cycle, if desired. We request public comment on our proposed effective date for this standard.

In the third and final provision of § 1302.90(e)(1), we propose a new paragraph that requires programs to ensure that staff salaries do not exceed the rate payable for level II of the Executive Schedule, which aligns with 42 U.S.C. 9848(b)(1). This provision reminds programs of the limitations on excessive compensation for the highest paid positions and ensures that salaries at the highest end of the pay scale are compliant with the limits described in the Act.

Finally, we recognize programs may need training and technical assistance (TTA) support to revise their salary scale or pay structure. Materials are available that describe key components and considerations of a salary scale for ECE staff.[71] Upon publication of a final rule, ACF will also be prepared to offer TTA supports to grant recipients. We invite public comment on what types of TTA supports programs will need to successfully implement the standards described here.

[71] See for instance this resource on salary/wage scales for the ECE workforce: *https://www.teachecnationalcenter.org/wp-content/uploads/2021/11/CCSA_2021_Salary-Scale-White-Paper-FINAL.pdf.*

Minimum Pay Requirement

Here we discuss the proposed changes to the new § 1302.90(e)(3), *Salary floor.* We propose a new standard in § 1302.90(e)(3) that requires programs to establish a salary floor or minimum pay that is sufficient to cover basic costs of living in the geographic area. This standard is intended to ensure that *all* staff in the program earn a wage sufficient to cover their basic living needs. More specifically, the proposed standard requires that, by August 1, 2031, a program must ensure the pay scale established or updated under § 1302.90(e)(1)(i) provides all staff with a wage or salary that is generally sufficient to cover basic needs such as food, housing, utilities, medical costs, transportation, and taxes, or would be sufficient if the worker's hourly rate were paid according to a full-time, full-year schedule. It is our intention that this standard targets those staff who currently receive the lowest wages in the program; this requirement will raise the pay for these staff. This could include aides, floaters, office staff, janitors, cooks, bus monitors, or other positions. This proposed standard contains multiple components each explained here in further detail.

First, the proposed § 1302.90(e)(3) specifies the same implementation timeline of August 1, 2031, as the other proposed wage requirements described in this section. We believe this will make it easier for programs to consider changes in wages holistically across these new requirements and provides programs ample time to plan for implementation. We request public comment on our proposed effective date for this standard.

Next, the proposed standard specifies that the wage or salary structure established or updated under § 1302.90(e)(1)(i) must provide all staff with a wage or salary that is generally sufficient to cover basic needs. With this language, we intend for programs to carefully consider costs of living in their local geographic area to cover basic needs, and what an individual should truly be earning to cover all of those costs. The language of the proposed standard further provides examples of basic needs which a full-time staff member's hourly wages or annual salary should be able to cover, no matter the job they work for the program, including food, housing, utilities, medical costs, transportation, and taxes. In most geographic areas of the country, ACF expects that, at a minimum, a sufficient wage under this provision would be equivalent to $15 per hour. We recognize that in some communities or

geographic areas, this floor may not be sufficient and may need to be adjusted to reflect higher costs of living. Further, programs would still be required to pay higher salaries when required by other sections of this NPRM.

Finally, the proposed § 1302.90(e)(3) specifies that the minimum pay or pay floor would be sufficient if the workers' hourly rate were paid according to a full-time, full-year schedule (or over 2,080 hours per year). This phrasing of the proposed requirement is to recognize that not all staff are full-time employees of the program, and it allows the implementation of this standard for staff employed part time. The proposed standard is intended to convey that programs are *not* expected to pay wages to a part-time employee that, in total, would cover all costs of living. Rather, this phrasing conveys that the wage paid to a part-time employee would be sufficient to cover the costs of living *if* that employee worked full time for the program. To illustrate, consider an example of a program that has determined $35,000 per year is the appropriate salary floor for their area. It is *not* the expectation that all employees of that program earn at least $35,000 per year, regardless of how many hours they work. Instead, the program should calculate the hourly rate associated with their salary floor, $35,000 in this example, according to a full-time, full year schedule. A standard full-time employee works 2,080 hours per year (*i.e.,* 40 hours per week for 52 weeks per year), which in this example corresponds to a minimum hourly rate of $16.83. As such, in our example, all employees of the program must earn at least $16.83 per hour.

We recognize that programs may need support or guidance to determine what wages are necessary, at the minimum, to cover basic costs of living for staff. Upon publication of a final rule, ACF will provide grant recipients with TTA supports in this area. We also acknowledge that there are several possible ways and existing resources available to calculate and determine what wage is required to cover basic costs of living. We offer a few examples here. It is of note that these are examples only and should not be considered an endorsement by ACF of these specific calculators or tools. First, there are multiple nationally recognized tools or calculators to assist employers in making this kind of determination. One such tool is the Living Wage Calculator developed by experts at the Massachusetts Institute of Technology (MIT).[72] Another is the Self-Sufficiency Standard developed by experts at the Center for Women's Welfare of the University of Washington.[73] These types of publicly available calculators take into account a variety of costs for basic needs and how these costs vary by geographic area, to help determine an appropriate hourly wage sufficient to cover these costs. Some calculators provide estimates for different family sizes and structures, but it is not the intent of the proposed standard to require programs to pay a wage sufficient to cover basic needs for staff that is adjusted by family size or family structure.

Alternatively, programs who wish to calculate their own minimum pay estimates could consider looking to other reliable data sources to determine expected costs for different types of expenditures for their geographic area, such as the following publicly available alternatives. Examples of publicly available data include, but are not limited to: Housing costs could be approximated using Fair Market Rent estimates published annually by the U.S. Department for Housing and Urban Development (HUD);[74] Food costs can be estimated using the USDA's food plan national average for adult food consumption;[75] Health care costs can be estimated using estimates from the Bureau of Labor Statistics' (BLS) Consumer Expenditures Survey for average consumer costs for health insurance, medical services, drugs, and medical supplies;[76] Transportation expenses can also be estimated using estimates from BLS Consumer Expenditures Survey for average consumer costs for cars and trucks, gas and oil, other vehicle expenses, and public transportation;[77] Expenses for taxes can be estimated by calculating percentages based on required Federal and State taxes. Finally, a program could consider if they want to incorporate estimates for other important costs such as personal care products, apparel, basic supplies, broadband, and telephone services.

Wage Comparability Across Head Start Preschool and Early Head Start

Finally, now we turn to the last of the proposed changes on wages, new paragraph § 1302.90(e)(4), *Wage comparability for all ages served.* Here, we propose a new standard that promotes wage comparability across Head Start Preschool and Early Head Start staff positions by requiring that the pay structure established or updated under § 1302.90(e)(1)(i) does not differ by age of children served for similar program staff positions with similar qualifications and experience. Head Start Preschool and Early Head Start staff perform similar important roles and responsibilities to support the development of enrolled infants, toddlers, and preschoolers. In classroom settings, Early Head Start teachers must have at least a CDA credential or equivalent credential, with training or coursework in infant and toddler development (§ 1302.91(e)(1)). Head Start Preschool teachers must have at least an associate or bachelor's degree in child development or early childhood education or otherwise meet the requirements of section 648(a)(3)(B) of the Act (§ 1302.91(e)(2)(ii)). The Act also requires that at least 50 percent of Head Start Preschool teachers nationwide have a bachelor's degree. We would expect that these differences in qualifications would result in different salaries or wages. However, a good share of Early Head Start teachers also hold a bachelors or higher degree (23 percent in 2022). Nonetheless, our administrative data from Head Start programs indicates a stark difference in average salaries between Head Start Preschool and Early Head Start teachers, even among those teachers with similar qualifications.

In 2022, the average Early Head Start teacher with a bachelor's degree earned an annual salary of $37,805, compared to $40,041 for the average Head Start Preschool teacher with a bachelor's degree, a salary gap of just over $2,000 per year.[78] For teachers with advanced degrees, the disparity is even greater; in 2022, these Head Start Preschool teachers earned on average 20 percent more in annual salary ($51,162) compared to Early Head Start teachers ($42,761), a salary gap of over $8,000.[79] This is a substantial gap in average salary between professionals holding the same qualifications and performing similar roles in supporting the learning and development of Head Start children. These disparities are common

[72] Glasmeier, A.K. Living Wage Calculator. 2020. Massachusetts Institute of Technology. *livingwage.mit.edu.*

[73] The Center for Women's Welfare. The Self-Sufficiency Standard. University of Washington. *https://selfsufficiencystandard.org/.*

[74] *https://www.huduser.gov/portal/datasets/fmr.html#2023.*

[75] *https://www.fns.usda.gov/cnpp/usda-food-plans-cost-food-reports-monthly-reports.*

[76] *https://www.bls.gov/cex/.*

[77] *https://www.bls.gov/cex/.*

[78] Source: Head Start 2021 PIR.

[79] Ibid.

in the field and lead to increased turnover.[80] Anecdotally, ACF has received reports that programs find it more difficult to hire Early Head Start teachers than Head Start Preschool teachers. The proposed § 1302.90(e)(4) will help close the wage gap between Early Head Start and Head Start Preschool teachers with similar degrees and promote stronger retention of Early Head Start teachers, thereby improving quality of services for enrolled infants and toddlers.

Staff for Whom Wage Standards Apply

Taken together, the new standards for wage requirements proposed in this NPRM include requirements for (1) progress to pay parity for Head Start education staff with kindergarten through third grade elementary teachers by providing wages comparable to preschool teachers in school-based settings, adjusted for responsibilities, qualifications, and experience ; (2) a pay scale that applies to all staff and promotes competitive wages across positions; (3) a minimum pay floor sufficient to cover basic costs of living; and (4) wage comparability across Head Start and Early Head Start positions for staff with similar qualifications and experience. We recognize that it must be clear for programs to which staff these newly proposed standards apply. It is our intention that these newly proposed standards improve wages for staff in the program who are either employees or contractors and who provide regular services for children and families in the program that are integral to program quality or functioning.

First, we propose that these standards apply to staff who are employees of the Head Start program, whose salary is paid at least in part with Head Start funds, and whose regular job responsibilities include activities or services to support enrolled children and families. We invite public comment on this clarification of which staff the wages standards apply to, including any potential unintended consequences.

Next, we summarize our expectations for how the proposed wage standards should apply to contracted staff. Contracted staff typically includes individuals who are not Head Start employees, with whom the program has contracted to provide an ongoing service (*e.g.,* disabilities specialists and mental health professionals, bus drivers, etc.). We recognize that many individuals who provide critical services for Head Start programs do so through contracted services. We also recognize that for Early Head Start—Child Care Partnership grant recipients, many child care partners are funded through contracts or other mechanisms with the grant recipients. In the context of the new wage standards, we propose that, for contracted staff, language in the contract must provide for wages comparable to what the recipient organization would provide if they were the employer. Further, we propose to require that programs strongly encourage contractors to use the funding to increase salaries for their staff.

We invite public comment on this expectation for how the wage standards apply to contractors or other partnership agreements, including any potential unintended consequences.

Finally, we recognize that these proposed standards will have different ramifications for implementation within certain organizational structures or for certain types of agencies. For example, grant recipients with employee bargaining agreements and those in organizations with existing formal salary structures that extend beyond just Head Start staff, such as in community action agencies, may need to engage representatives of workers if they need to negotiate new collective bargaining agreements that increase wages for Head Start staff (or for specific groups of Head Start staff, such as teachers). We also recognize that many Tribal grant recipients may have pay structures already in place for Tribal employees that include staff beyond Head Start. We encourage all programs, not solely those with collective bargaining agreements, to engage Head Start staff as they work to meet these new proposed standards, both for wages and other proposed changes. ACF intends to provide TTA supports to understand options and strategies for implementing wage increases within the context of varied organizational structures and agency types.

ACF recognizes that the proposed wage requirements are complex, and as discussed previously, may be experienced differently by different communities. We seek public comment on how any of the proposed wage requirements in this section may impact various communities. We specifically request public comment from the special populations served by Head Start, including American Indian and Alaska Native (AIAN) and MSHS programs and communities. We also specifically request comment from Head Start staff and their representatives, and other early childhood program providers.

Workforce Supports: Staff Benefits (§ 1302.90)

Section 1302.90 outlines requirements for personnel policies, including the establishment of personnel policies and procedures, background check procedures, standards of conduct, and communication with dual language learners. In alignment with the newly proposed requirements in § 1302.90(e) to improve wages for staff, we also propose a new paragraph (f) in this section that outlines requirements for grant recipients to provide benefits to staff. The proposed new standards require grant recipients to provide or facilitate access to health insurance for all staff; paid sick leave, and paid family leave for full-time staff; provide short-term behavioral health services for full-time staff for free or at minimal cost to them; and facilitate access to Public Service Loan Forgiveness (PSLF) and child care subsidies for eligible staff. We are also considering a requirement for recipients to provide retirement benefits to all full-time staff and we specifically request public comment on whether to add such a requirement in a final rule. This request for comment on a possible requirement for retirement benefits is discussed in further detail below. In the context of these proposed requirements, we propose to define ''full-time staff'' as those working 30 hours per week or more while the program is in session. For programs operating longer than a typical school year (*e.g.,* year-round programs), we propose a requirement that such programs develop a policy for vacation or personal leave. Grant recipients are encouraged to consider and offer other benefits that may support staff recruitment and retention.

First, we propose to add § 1302.90(f)(1) as a lead in statement to define full-time staff as it applies to several proposed benefit requirements. Proposed (f)(1) defines full-time staff as those working 30 or more hours per week during the program year. Next, we propose to add (f)(1)(i) which requires a program to provide or facilitate access to high-quality, affordable health insurance. This proposed standard would require grant recipients to either: (1) provide and contribute to employer-sponsored health insurance coverage, or (2) educate, connect, and facilitate the enrollment of employees in health insurance options in the Healthcare.gov Marketplace (Marketplace), the appropriate State-specific health insurance marketplace, or Medicaid, for full-time staff. Employees are not obligated to accept employer-provided or employer-facilitated health insurance, such as those receiving

[80] Ibid.

insurance coverage through a spouse or another manner. Through input from OHS regional office staff and members of the Head Start community, we are aware that, while many Head Start staff are already offered employer-sponsored health coverage, this coverage may still entail considerable out-of-pocket costs for staff. Thus, if grant recipients choose to offer employer-sponsored coverage, we encourage employers to provide an insurance plan that offers coverage similar to that offered by silver, gold, or platinum plans in the Marketplace.[81] Definitions of affordable coverage, minimum value,[82] and minimum essential health benefits[83] are determined by the Affordable Care Act (ACA), and large Head Start grant recipients are already subject to the employer shared responsibility provisions in the ACA.[84] Premium tax credits[85] subsidize the cost of health insurance coverage in the Marketplace and are available to individuals in households with incomes up to 400 percent of the Federal Poverty Guidelines. We anticipate most Head Start staff are currently eligible for these tax credits, and some may be eligible for Medicaid depending on their family size, household income, and the State in which they live. Because premium tax credit amounts vary with household income and household compositional changes, we also anticipate that as the wage requirements proposed in new paragraph (e) of this section are implemented, this would affect premium tax credit amounts or eligibility, as well as Medicaid eligibility, for some staff.

For part-time staff who work fewer than the 30 hour per week as defined above, we propose to require programs to facilitate the enrollment of these staff in health insurance options in the Marketplace or through Medicaid for which they may be eligible. Specifically, we propose to add new paragraph (f)(2) which requires a program to facilitate access to high-quality, affordable health insurance for each part-time staff member. That is, grant recipients would not be required to offer nor precluded from offering employer-sponsored health insurance to part-time staff, but the proposed standard would require, at a minimum, that the grant recipient make part-time staff aware of potential benefits through premium tax credits for which they may be eligible and facilitate their connection to the Marketplace or Medicaid.

Increasing Head Start staff access to and the quality of health insurance benefits is key to attracting and retaining skilled staff and to being competitive with other jobs. In March 2022, 73 percent of the civilian workforce had access to employer-sponsored healthcare benefits (88 percent of full-time workers and 23 percent of part-time workers), with employers paying on average 80 percent of premiums for employee coverage and 67 percent for family coverage.[86] By comparison, in 2019, only 27 percent of ECE workers in center-based settings had private health insurance through their own employer, while nearly all K–12 educators had employer-sponsored coverage.[87] Nearly 16 percent of the ECE workforce lacked health insurance.[88] As previously described, we are also aware that, while many Head Start staff may be offered employer-sponsored health coverage, it may not cover many health expenses, may not cover family members and/or may entail considerable out of pocket costs for staff. In order for Head Start programs to compete with other sectors that could potentially employ staff qualified for Head Start—including public schools—it is critical that Head Start programs offer or connect staff to quality, affordable health insurance.

Based on our analysis of OHS administrative data from grant recipients, we have determined that most recipients employ more than 50 workers and are therefore subject to the ACA's shared responsibility for employers regarding health coverage, and many offer some level of health insurance or other employee benefits.[89] We anticipate some implementation issues for small grant recipients with fewer than 50 employees who do not currently offer or administer employer-sponsored benefits like health insurance. However, the proposed requirements as written allow recipients to facilitate full-time staff members' enrollment in health insurance options in the Marketplace, which helps the logistical difficulties of negotiating employee benefits plans with insurers, though we acknowledge that recipients may require technical assistance to connect with Navigators or other resources. The American Rescue Plan Act of 2021 and the Inflation Reduction Act of 2022[90] increased the subsidies for purchasing private health insurance in the Marketplace available to those meeting income and other requirements, and grant recipients may choose to administer or contribute to employees' flexible spending accounts (FSAs) to defray out-of-pocket health care costs. When employees are covered by a health savings account (HSA)-eligible high-deductible health plan, grant recipients may choose to administer or contribute to employees' HSAs to defray out-of-pocket health care costs.

Next, we propose a new paragraph (f)(1)(ii) which requires that programs offer paid sick leave to full-time staff, based on an accrual system based on hours worked or by offering a number of days updated annually. At a minimum, the accrual must meet the standards set by State or local laws, if applicable. Paid leave due to illness or other reasons is a typical employer-sponsored benefit in the U.S. workforce. We do not propose a specific required number of days per year but seek comments on whether the standard should specify a minimum number of leave days or accrual rate.

Paid sick leave for workers allows for recovery from personal illness or the time to care for ill family members, but employer-provided paid sick leave is not universal and varies with worker wages. In March 2022, 79 percent of civilian workers had access to paid sick leave, 79 percent had paid holidays, and 77 percent had paid vacation leave, but just 40 percent of the lowest 10 percent of earners had access to paid sick leave compared to nearly all (96 percent) of

[81] See the *healthcare.gov* website for a description of Marketplace plans and actuarial value: *https://www.healthcare.gov/choose-a-plan/plans-categories/.*

[82] See the Internal Revenue Service (IRS) website for more information on minimum value and affordability: *https://www.irs.gov/affordable-care-act/employers/minimum-value-and-affordability.*

[83] See healthcare.gov for a list of essential health benefits: *https://www.healthcare.gov/glossary/essential-health-benefits/.*

[84] See the IRS website for more information on the employer shared responsibility provisions: *https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions.*

[85] See the healthcare.gov website for a description of premium tax credits and eligibility: *https://www.healthcare.gov/lower-costs/save-on-monthly-premiums/.*

[86] Bureau of Labor Statistics (BLS). (2022). Employee Benefits in the United States, March 2022. *https://www.bls.gov/news.release/pdf/ebs2.pdf.*

[87] Rudich, J., Sugar, S., Chien, N., Peters, C., & Sommers, B. (2021, November). *Assessing uninsured rates in early care and education workers.* Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. *https://www.aspe.hhs.gov/sites/default/files/documents/557aff156a2eac8dd50b489172c7eac6/early-educators-uninsured-data-point.pdf?_ga=2.163634812.2117647616.1661871770-774747381.1611252684.*

[88] Rudich et al. (2021).

[89] See *https://www.federalregister.gov/documents/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage.*

[90] See *https://www.cms.gov/blog/inflation-reduction-act-tax-credits-improve-coverage-affordability-middle-income-americans#_ftnref6/.*

the top 10 percent of earners.[91] Eighty-eight percent of full-time civilian workers had access to paid sick leave compared to just about half (51 percent) of part-time workers.[92] Workers who lack paid sick leave are more likely to go to work while ill and to forgo medical care for themselves and their families,[93] problems exacerbated by the pandemic. Having access to sick leave is particularly important for a workforce that directly cares for, teaches, and interacts with young children in group settings in which the spread of communicable illness is common.[94]

Next, we propose a new paragraph (f)(1)(iii) which requires that programs offer job-protected periods of paid family leave to employees consistent with eligibility for and protections in the Family and Medical Leave Act (FMLA) of 1993 regardless of employer size. Or, if applicable, the proposed standard clarifies that programs should comply with requirements set by State or local laws for paid family leave. Periods of leave that are longer than the few days per year typically offered by paid sick leave may be needed during certain life events, including a serious illness for a staff member or their family members, or the birth of a child. A growing body of research shows that access to paid family leave improves maternal and child health and family economic well-being and increases father engagement and preventive care receipt.[95] We intend for this requirement to apply to all programs, even those who are not covered by FMLA due to employer size (*e.g.,* fewer than 50 employees). As such, we expect that the proposed paid family leave policy would apply for full-time employees in all Head Start programs, regardless of the number of employees in the program, who have had at least 12 months of tenure with their employer. The reason for the leave must be a qualifying reason under FMLA, regardless of whether the employer is covered by FMLA.

An estimated 29 percent of Head Start staff work in one of the 11 states and the District of Columbia that have enacted paid family leave laws as of October 2022, though the requirements in these laws vary.[96] In March 2022, more than one-quarter (29%) of primary and secondary, and special education teachers had access to paid family leave benefits through their employers,[97] with others having access to State-sponsored public paid family leave programs.[98] Employer-provided paid family leave benefits are inequitably distributed in the workforce, with 34 percent of civilian workers in management, professional and related occupations having access, compared to 15 percent of those in service occupations.[99]

FMLA entitles eligible workers to periods of unpaid, job-protected leave for up to 12 weeks per 12-month period for the birth, adoption, or foster care placement of a new child within one year of birth, adoption, or placement; to care for a spouse, child, or parent with a serious health condition; a serious health condition that makes the employee unable to perform the essential functions of his or her job; or a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty. Up to 26 weeks of leave is available for an employee to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin.[100] To be eligible for FMLA, workers must work for a covered employer at a location with 50 or more employees within 75 miles; have worked 1,250 hours or more during the 12 months prior to the start of leave; and have worked for the employer for 12 months or more before the start of leave.[101] However, under this proposed new requirement, all Head Start programs, regardless of employer size, would be required to provide full-time staff that meet the employee eligibility requirements (*i.e.,* have worked 1,250 hours or more during the 12 months prior to the start of leave; and have worked for the employer for 12 months or more before the start of leave) with partial or full wage replacement during qualifying periods of leave. We request comments on whether the reasons for leave or eligibility requirements, such as how long a staff member has been with an employer or employer size, should be modified for this proposed standard, or if aligning with FMLA is the best approach.

Next, for programs whose program year lasts longer than a typical school year, we propose in new paragraph (f)(1)(iv) to require such programs offer full-time staff the accrual of paid vacation or personal leave commensurate with experience or time working at the program. In 2022, 77 percent of civilian workers had paid vacation leave and 48 percent had paid leave designated as personal leave. That year, only 21 percent of primary and secondary teachers had paid vacation leave.[102] But as noted by BLS,[103] the majority of K–12 school districts function on a school year schedule (37–38 weeks per year) with regular breaks, as do many Head Start Preschool programs. However, most Early Head Start programs and some Head Start Preschool programs operate throughout the summer months as well, and these ''year-round'' program staff are not benefitting from a summer break. We believe these staff working on more of a year-round schedule should have the opportunity to accrue paid vacation leave, but we do not propose a specific

[91] BLS. (2022). Table 6. Selected paid leave benefits: Access, March 2022.

[92] BLS. (2022). Table 6. Selected paid leave benefits: Access, March 2022. *https://www.bls.gov/news.release/pdf/ebs2.pdf.*

[93] Schneider D. Paid sick leave in Washington State: Evidence on employee outcomes, 2016–2018. *Am J Public Health.* 2020;110(4):499–504. doi:10.2105/AJPH.2019.305481; DeRigne LA, Stoddard-Dare P, Quinn L. Workers without paid sick leave less likely to take time off for illness or injury compared to those with paid sick leave. *Health Aff.* 2016;35(3):520–527. doi:10.1377/hlthaff.2015.0965. Schenider, D., Harknett, K., & Vivas-Portillo, E. Olive Garden's expasion of paid sick leave during COVID–19 reduced the share of employees workign while sick. *Health Aff.* 2021;40(8):1328–1336. *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.02320.*

[94] Bradley, R. H. (2003). Child care and common communicable illnesses in children aged 37 to 54 months. *Archives of Pediatric and Adolescent Medicine, 157*(2), 196–200. *https://pubmed.ncbi.nlm.nih.gov/12580692/.*

[95] Rossin-Slater, M., & Uniat, L. (2019). Paid family leave policies and Population Health. *Health Affairs* Brief. *https://www.healthaffairs.org/do/10.1377/hpb20190301.484936/* Waldfogel, J., Doran, E., & Pac, J. (2019*). Paid family and medical leave improves the well-being of children and families.* SRCD Child Evidence Brief. *https://www.srcd.org/research/paid-family-and-medical-leave-improves-well-being-children-and-families.*

[96] See: *https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf.*

[97] BLS. (2022). National Compensation Survey: Employee Benefits in the United States, March 2022. Table 7: Leave benefits by occupational category, Civilian workers, March 2022. *https://www.bls.gov/ebs/publications/september-2022-landing-page-employee-benefits-in-the-united-states-march-2022.htm.*

[98] As of October 2022, paid family leave laws were in place in 11 states and the District of Columbia. See: *https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf.*

[99] BLS. (2022). National Compensation Survey: Employee Benefits in the United States, March 2022. Table 7: Leave benefits by occupational category, Civilian workers, March 2022. *https://www.bls.gov/ebs/publications/september-2022-landing-page-employee-benefits-in-the-united-states-march-2022.htm.*

[100] *https://www.dol.gov/agencies/whd/fmla.*

[101] U.S. Department of Labor. FMLA Frequently Asked Questions. *https://www.dol.gov/agencies/whd/fmla/faq#3.*

[102] BLS. (2022). National Compensation Survey: Employee Benefits in the United States, March 2022. Table 7: Leave benefits by occupational category, Civilian workers, March 2022. *https://www.bls.gov/ebs/publications/september-2022-landing-page-employee-benefits-in-the-united-states-march-2022.htm.*

[103] BLS. (2022). Employee Benefits in the United States, March 2022. *https://www.bls.gov/news.release/pdf/ebs2.pdf.*

required number of days per year or accrual rate. We request comment on whether these requirements regarding paid vacation or personal leave are important for attracting and retaining qualified staff. We seek comments on whether the implementation of these requirements would lead to unintended consequences or unpredictable expenses, particularly in the case of paying out upon an employee leaving a program.

Next, we propose to add new paragraph (f)(1)(v) which requires that employers offer access to short-term behavioral health services for full-time staff that entails minimal or no out-of-pocket costs for staff. We propose that these services include access to approximately three to five outpatient visits per year.[104] The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 requires that group health plans and health insurance coverage ensure that financial requirements and treatment limitations on mental health and substance-use disorder services are no more restrictive than the predominant financial requirements and treatment limitations applicable to medical and surgical health services, and that there are no financial requirements and treatment limitations applicable only with respect to mental health and substance use disorder services. Mental health and substance-use disorder services, including treatment such as counseling and psychotherapy, are also one category of the essential health benefits that health insurance issuers offering non-grandfathered [105] group or individual health insurance coverage (including health insurance coverage offered in the Marketplace) must cover without annual dollar caps.

Even with health insurance, out-of-pocket expenses like high deductibles or copays may serve as barriers for individuals facing mental illness or symptoms for receiving care. In 2010, only 15 percent of private industry workers had a high deductible plan, compared to 45 percent in 2018.[106] In a 2020 nationally representative survey, among those reporting perceived unmet mental health care needs in the prior year, 46 percent reported that they could not afford the cost of treatment, 19 percent reported that their health insurance did not pay enough for mental health services, and 29 percent reported they did not know where to go for services.[107]

Research suggests that Head Start staff face a constellation of stressors, including financial stress and challenging behaviors in the classroom, which are in turn associated with poorer staff physical and psychological well-being, and may benefit from increased access to mental health care services. Head Start teachers experience high rates of health problems and depressive symptoms, with some studies finding that nearly one-third have depressive symptoms.[108] A 2013 study in Pennsylvania found that Head Start teachers showed higher rates of poor or fair health, depressive symptoms, unhealthy days, and having three or more health conditions compared to women with similar backgrounds.[109] The challenges surrounding the COVID–19 pandemic exacerbated stress and health problems among early childhood teachers. A study of ECE professionals conducted in summer 2020 in New York City found that 31 percent reported doctor-diagnosed anxiety and 23 percent reported doctor-diagnosed depressive symptoms.[110] Another study of over 80,000 ECE professionals found that 47.5 percent screened positive for depression and 66.5 percent reported moderate to high stress levels, which was a higher prevalence of both depression and stress than among US adults overall in 2020.[111] Further, research on Head Start programs has linked staff job stressors and poor mental health to lower-quality teacher-child interactions and teachers' behavioral management skills.[112] In a sample of Head Start programs, teachers' depressive symptoms were associated with fewer gains in children's math skills across the year.[113]

Access to free or low-cost short term mental health services is key to promoting staff well-being and children's development. Programs may use a variety of strategies to ensure staff facing mental health conditions or symptoms have access to short-term, affordable mental health treatment. Employers may do so through an employer-sponsored group health plan that provides short-term, outpatient behavioral health care at low out-of-pocket costs, or through an Employee Assistance Program (EAP) that qualifies as an excepted benefit and can refer and connect employees to mental health resources and providers. While we propose to require programs to cover approximately three to five outpatient visits, nothing in these rules prohibit a

[104] When offering access to the behavioral health services that would be required under these proposed rules, an employer should be aware that other provisions of law may apply to that arrangement. In general, the provision of medical care, including the provision of behavioral health services, could result in the arrangement being considered a group health plan subject to the relevant provisions of the Employee Retirement Income Security Act (ERISA) that applies to group health plans, unless the arrangement qualifies as an excepted benefit. For an Employee Assistance Program (EAP) to qualify as an excepted benefit, the EAP must meet the requirements of 26 CFR 54.9831–1(c)(3)(vi); 29 CFR 2590.732(c)(3)(vi) and 45 CFR 146.145(b)(3)(vi), including that the program may not provide significant benefits in the nature of medical care and that no employee premiums or contributions or cost-sharing can be required as a condition of participation in the EAP. To the extent the arrangement that provides the behavioral health visits required under these proposed rules does not meet the requirements to qualify as an excepted benefit, the arrangement may be considered a group health plan subject to the requirements of Part 7 of the Employee Retirement Income Security Act (ERISA).

[105] Section 1251 of the Affordable Care Act provides that grandfathered health plans are not subject to certain provisions of the Code, ERISA, and the PHS Act, as added by the Affordable Care Act, for as long as they maintain their status as grandfathered health plans. See 26 CFR 54.9815–1251; 29 CFR 2590.715–1251 and 45 CFR 147.140. For a list of the market reform provisions applicable to grandfathered health plans under title XXVII of the PHS Act that the Affordable Care Act added or amended and that were incorporated into the Code and ERISA, visit *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-andadvisers/grandfathered-health-plans-provisions-summary-chart.pdf.*

[106] BLS. (2023). *High deductible health plans and health savings accounts. https://www.bls.gov/ebs/factsheets/high-deductible-health-plans-and-health-savings-accounts.htm.*

[107] Council of Economic Advisors. (2022, May). *Reducing the economic burden of unmet mental health needs.* The White House. *https://www.whitehouse.gov/cea/written-materials/2022/05/31/reducing-the-economic-burden-of-unmet-mental-health-needs/.*

[108] Ibid.

[109] Whitaker, R., Becker, B., Herman, A., & Gooze, R. (2013). The physical and mental health of Head Start staff: The Pennsylvania Head Start staff wellness survey, 2012. *Preventing chronic disease, 10*(1), 1–9.

[110] Kwon, K.-Ah., Ford, T.G., Tsotsoros, J., Randall, K., Malek-Lasater, A., & Kim, S.G. (2021). Challenges in working conditions and well-being of early childhood teachers by teaching modality during the COVID–19 pandemic. *International Journal of Environmental Research and Public Health, 19,* 4919.

[111] Elharake, J.A., Shafiq, M., Cobanoglu, A., Malik, A.A., Klotz, M., Humphries, J.E., . . . & Gilliam, W.S. (2022). Prevalence of Chronic Diseases, Depression, and Stress among US Child Care Professionals during the COVID–19 Pandemic. *medRxiv,* 2022–03.

[112] Li-Grining, C.L., Raver, C.C., Champion, K., Sardin, L., Metzger, M., & Jones, S.M. (2010). Understanding and improving classroom emotional climate and behavior management in the ''real world'': The role of Head Start teachers' psychosocial stressors. *Early Education and Development, 21*(1), 65–94.; Roberts, A., LoCasale-Crouch, J., Hamre, B., & DeCoster, J. (2016). Exploring Teachers' Depressive Symptoms, Interaction Quality, and Children's Social-Emotional Development in Head Start. *Early Education and Development, 27*(5), 642–654.; Whitaker, R.C., Dearth-Wesley, T., & Gooze, R.A. (2015). Workplace stress and the quality of teacher-children relationships in Head Start. *Early Childhood Research Quarterly, 30,* 57–69.

[113] Jeon, S., Jeon, L., Lang, S. & Newell, K. (2021). Teacher depressive symptoms and child math achievement in Head Start: The roles of family-teacher relationships and approaches to learning. *Child Development,* 92(6), 2478–2495.

program from providing additional visits.

Next, we propose to add new paragraph (f)(3) which requires programs to connect staff members who are parents with affordable child care resources and information—including connections to child care resource and referral agencies if applicable—and to facilitate the enrollment of staff members who may be eligible in the child care subsidy program. The early childhood workforce, including Head Start staff, are disproportionately women of color,[114] many of whom rely on child care for their own children. High-quality child care is expensive and difficult to find,[115] particularly for infants and toddlers, but key to both promoting labor force participation and children's development.[116] Child Care Resource and Referral (CCR&R) organizations and other child care consumer education organizations serve as resource hubs to connect families to high-quality, affordable child care through referrals and information on licensing, subsidies, and how to access services for children with disabilities.[117] Head Start programs can ensure that staff members are aware of and connected to local CCR&Rs or other consumer education organizations in their communities. For each staff member who may be eligible for public child care assistance, a program should educate and facilitate application to and enrollment in the child care subsidy program.

Further, we recognize that many Head Start staff members' own children may be eligible for Head Start services. Being able to enroll one's own child in an ECE program where that individual is also employed could be an important benefit to support recruitment and retention of staff. Therefore, we also propose to add a new paragraph (5) to § 1302.14(a) *Selection criteria* that clarifies programs can choose to prioritize the enrollment of staff members' children through selection criteria. Section 1302.14(a) includes requirements for establishing selection criteria to weigh the prioritization of selection of participants for the program. The proposed standard in new paragraph (5) clarifies that programs can choose, as part of this process, to prioritize staff members' children. Programs are reminded that in order to be enrolled in a Head Start funded slot, such children would still need to be age eligible and meet an eligibility category described in § 1302.12(c) or (d). We also note that as the wage requirements proposed in this NPRM are implemented, this would likely affect eligibility for some staff.

Next, we propose a new paragraph (4) in § 1302.90(f) that requires programs to facilitate access to Public Service Loan Forgiveness (PSLF), or other applicable student loan debt relief programs, for any Head Start staff who may have student loan debt. This includes timely certification of employment for the staff member. Evidence suggests that student loan debt is higher among the ECE workforce than the overall population. When combined with relatively low wages, this compounds economic hardship. According to a March 2022 survey of approximately 2,500 ECE providers, 19 percent reported they had student debt, compared to 17 percent of the U.S. adult population overall, and 17 percent reported they carried debt for others.[118]

The PSLF Program, administered by the U.S. Department of Education, is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy public service and loan payment requirements. Many Head Start programs share information with staff about the PSLF program as well as other State or local student debt relief opportunities they may be eligible for as a staff recruitment and retention strategy that can reduce financial stress among staff. Individual borrowers who are eligible for PSLF must submit with their PSLF application a certification of qualifying employment which requires a signature from the employer. It is important that Head Start programs offer timely certification of employment to facilitate debt relief for Head Start staff. This proposed standard would require programs to facilitate access to PSLF and other available student debt relief by providing information about debt relief opportunities and offering timely certification of employment.

Next, recognizing that there are other benefits that may enhance programs' ability to compete for skilled staff, we propose to require programs, at least once every 5 years, to assess and determine if their benefits package is adequate for recruiting and retaining full-time staff and competitive with benefits offered by local or neighboring school districts. The proposed standard specifies that programs may offer additional benefits to staff, including more enhanced health benefits, retirement savings plans, flexible savings accounts, or life, disability, and long-term care insurance. We propose to encourage programs to offer additional benefits to all staff based on the needs of their workforce. Additional benefits may include but are not limited to retirement, dental or vision benefits; subsidized health insurance for staff members' dependents; tax-exempt health, dependent care, or flexible spending accounts; or other benefits to staff such as life, long-term care, and disability insurance.

Finally, ACF is considering adding retirement savings plans to the list of required benefits to be provided to full-time Head Start staff and specifically seeks public comment on whether to add an additional requirement for recipients to provide retirement savings benefits to full-time staff. Research indicates that the majority of public school teachers are offered some type of retirement or pension plan.[119] And a study of ECE professionals in one State found that 80 percent were worried about their retirement savings.[120] Providing retirement benefits may provide another mechanism for Head Start programs to recruit and retain staff. However, we also recognize that such a requirement could lead to additional slot loss in Head Start absent additional appropriations. We seek public comment on whether retirement savings benefits, ranging from employer assistance in establishing retirement accounts to more comprehensive benefits with employer matching

[114] Coffey, M. (2022). *Still underpaid and unequal: Early childhood educators face low pay and a worsening wage gap.* Center for American Progress. *https://www.americanprogress.org/article/still-underpaid-and-unequal/*; Mayfield, W., & Cho, I. (2022). *The National Workforce Registry Alliance 2021 Workforce Dataset: Early Childhood and School-age Workforce Trends, with a Focus on Racial/Ethnic Equity.* National Workforce Registry Alliance. *https://www.registryalliance.org/wp-content/uploads/2022/05/NWRA-2022-ECE-workforce-data-report-final.pdf* ; Smith, L., McHenry, K., Morris, & Chong, H. (2021). *Characteristics of the child care workforce.* Bipartisan Policy Center. *https://bipartisanpolicy.org/blog/characteristics-of-the-child-care-workforce/.*

[115] Child Care Aware. (2022). *2021 Child Care Affordability. https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care/#ChildCareAffordability.*

[116] Chaudry, A., Morrissey, T.W., Weiland, C., & Yoshikawa, Y. (2021). *Cradle to Kindergarten: A New plan to combat inequality, 2nd Edition.* New York: Russell Sage Foundation.

[117] *https://www.childcareaware.org/about/child-care-resource-referral/.*

[118] RAPID Survey, Student Debt in the Early Childhood Workforce, May 2022. Retrieved from: *https://rapidsurveyproject.com/our-research/student-debt-in-the-early-childhood-workforce.*

[119] BLS. (2022). Employee benefits in the United States. Table 1. Retirement benefits: Access, participation, and take-up rates.

[120] Sakai, L. (2014). ''Economic Insecurity and Early Childhood Teaching.'' In *Worthy Work, Still Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study,* edited by Marcy Whitebook, Deborah Phillips, and Carollee Howes, 41–54. Berkeley, CA: Center for the Study of Child Care Employment.

contributions, consistent with what public schools offer, should be required as an effective mechanism for staff recruitment and retention, especially when weighed against potential slot loss. Overall, we believe this set of employer-provided benefits is necessary to attract and retain a skilled, qualified workforce in Head Start programs. In general, as Head Start programs phase in wage increases and benefits, they should hold harmless existing benefits such that employees receive benefits that are at least as generous as their current benefits. ACF requests comment about the degree to which grant recipients are currently offering a set of high-quality benefits and the administrative difficulty or expense creating these benefits would entail. We also seek public comment on how any of the proposed benefit requirements in this section may impact various communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Workforce Supports: Staff Wellness (§ 1302.93)

Section 1302.93 outlines program requirements for promoting staff health and wellness, including that staff: have regular health examinations; do not pose a risk of exposing others in the program to communicable diseases; are provided access to mental health and wellness information, including opportunities to learn about these topics. However, these current standards lack critical requirements to promote staff physical and mental wellness on the job, including regular breaks during the workday and access to appropriate adult-size furniture in classrooms. We believe the proposed requirements described in this section, together with the proposed requirements described in the *Subpart I—Human Resources Management* subsection of the *Mental Health Services* section of this preamble, will provide much needed supports to reduce staff stress and burnout; improve the quality of interactions between teachers and children; and improve staff recruitment and retention. Importantly, improving staff retention will also contribute to a more positive, improved working environment for all staff.

In this section we describe newly proposed requirements for grant recipients to provide a minimal level of regular breaks for staff as well as brief unscheduled 'wellness breaks' for staff who work directly in classrooms with children to support stress management, improve well-being, reduce turnover, and improve staff retention and the quality of services. We also propose a requirement for classroom staff to have access to appropriate adult-sized furniture in classrooms to support ergonomic health. These newly proposed provisions are consistent with the proposed requirements in new paragraphs (e) and (f) of § 1302.90 that support improved staff wages and benefits.

First, we propose to add a new paragraph (c) to § 1302.93 which outlines requirements for break times during work shifts. In new paragraph (c)(1)(i) we specify that a program must provide, for each staff member working a shift lasting between four and six hours, a minimum of one 15-minute break per shift. In new paragraph (c)(1)(ii), we specify that a program must provide, for each staff member working a shift lasting six hours or more, a minimum of one 30-minute break per shift. Newly proposed paragraph (c)(2) requires programs to comply with State laws or regulations that are more stringent for staff breaks, if applicable. The required breaks outlined in new paragraph (c)(1) are minimums, and programs may choose to provide staff with longer or more frequent breaks depending on the needs of staff, children, and their programs.

For staff members who regularly work in classrooms with children, the breaks for staff described in (c)(1) will be subject to required staff-child ratios. However, in newly proposed paragraph (c)(3), we specify that during break times for classroom staff, one teaching staff member may be replaced by one staff member who does not meet the teaching qualifications required for the age, as long as this staff member has the necessary training and experience to ensure safety of children and minimal disruption to the quality of services. ACF expects that, for classroom staff, these regular breaks will be scheduled for periods that are least disruptive for classroom instruction or routines, such as during nap times, meals, or outside play periods and will be covered by staff who have completed the appropriate background checks.

In addition, we propose to add new paragraph (c)(4), which requires a program to design and implement a systematic approach to ensure each staff member that works directly with children as part of their regular job responsibilities can have access to brief unscheduled wellness breaks of about 5 minutes as needed while ensuring child safety. ACF expects these unscheduled breaks to be brief, of approximately 5 minutes in length. The safety of children is of the utmost importance to ACF, and we recognize this is a key priority for programs as well. By designing an intentional, systematic approach for brief 'wellness' breaks, we think programs will be able to better support staff members who feel temporarily overwhelmed or stressed by the challenges of the position in the classroom or otherwise need a very brief break (*e.g.,* to use the restroom or take an emergency phone call). It will allow staff the opportunity to briefly step away from an overwhelming situation, calm down as needed, and think through an appropriate approach to handling the given situation. We believe this can help prevent or reduce child incidents in classrooms. At the same time, careful attention should be given at the program level to allow for these brief wellness breaks while also promoting the safety of children. It is expected that the number of unscheduled breaks could vary daily, and it may be the case that on any given day individuals may not need unscheduled breaks whereas on other days they could need more. We request public comment on the length or ideal frequency of these brief wellness breaks.

We also propose to add a new paragraph (d) to § 1302.93 which requires programs to ensure staff have access to adult size furniture in classrooms. This could include, for instance, adult sized chairs or desks depending on what the classroom layout allows. This change was motivated by the data indicating that staff in Head Start programs experience work-related ergonomic pain. For example, a survey of Head Start teachers in Baltimore found that 80 percent reported musculoskeletal pain as a result of their work.[121] In an Oklahoma sample of Head Start teachers, more than seven in ten (73 percent) Head Start staff reported work-related ergonomic pain, including in routine activities like diapering or stooping to pick up children.[122] Additionally, nearly one-third reported neck pain (31 percent), one in four reported shoulder pain (26 percent), and over half reported back pain (56 percent).[123] The proposed requirement for adult size furniture will support the physical health of teachers and aligns with ACF's goal of improving

[121] The Happy Teacher Project. (2020). *Strengthening Health, Wellness, and Psychosocial Environments in Head Start: Technical Report 2020.* Johns Hopkins University and Oklahoma State University

[122] Kwon, K., Ford, T., Randall, K., Castle, S. (2021). *Head Start Teacher Paradox: Working conditions, well-being, and classroom quality.* The Happy Teacher Project: Johns Hopkins University and Oklahoma State University.

[123] Ibid.

and investing in staff health and wellness.

Together, regularly scheduled breaks, brief unscheduled wellness breaks, and access to adult size furniture in classrooms will provide staff with more of the support they need to provide high-quality education and care to enrolled children. There are no Federal and few State or local laws regarding employers' offering of staff breaks. The work of ECE staff, including Head Start teachers, involves actively educating, caring for, and supervising young children, jobs that require the full attention of staff members and can be physically, mentally, and emotionally demanding, particularly if done for long shift periods. Prior research suggests that Head Start teachers have low or inconsistent access to regular or unscheduled breaks at work. For instance, in 2021, the Happy Teacher Project found that 62 percent of Head Start teachers have no designated breaks, compared to 44 percent of the general ECE workforce.[124] In another survey of Head Start teachers in Maryland, 85 percent reported there was no designated break time for staff (other than children's nap time) and 69 percent reported there were no consistent bathroom breaks for staff; 55 percent indicated that more daily breaks would improve overall well-being.[125] In samples of ECE teachers, up to one-third have reported diseases such as urinary tract infections and high blood pressure at higher rates than in populations of similar sociodemographic composition.[126] This research suggests some Head Start staff may work full-day shifts without adequate breaks to eat their own meals, attend to minor personal tasks, or take care of their own mental and physical well-being.

The lack of access to breaks at work may be part of a constellation of workplace stressors faced by Head Start staff, which as described previously, includes financial stress and the significant responsibility entrusted to Head Start staff who are charged with supporting the most vulnerable children and families who face a myriad of challenges. Work climate and stressors are associated with teacher psychological well-being,[127] and in turn, contribute to staff turnover.[128] In the Baltimore survey, 43 percent of Head Start teachers surveyed reported an intention to leave the job.[129] Additionally, as stated earlier, Head Start staff turnover in 2022 was the highest it has been in two decades. Staff turnover interrupts adult-child relationships and is associated with poorer child outcomes [130] and increases the workloads and schedule changes for the teachers who remain.[131] Among staff who remain in their jobs, work environments and physical and psychological well-being are associated with teachers' relationships with children and children's outcomes.[132] In a study of ECE centers that included Head Start programs, lead and assistant teachers' work stress was associated with children's social and emotional outcomes, including anxiety-withdrawal and social competence.[133]

Research suggests that early childhood teacher well-being was low prior to the COVID–19 pandemic, and that the pandemic exacerbated the workplace, financial, and other stressors among the ECE workforce, contributing to reductions in emotional well-being, physical health, and job commitment in the workforce.[134] Further, research finds evidence of racial differences, such as higher rates of stress for Black teachers and higher rates of ergonomic pain for Latinx teachers for those teaching in-person when compared to their White counterparts, with implications for equity among a workforce that is disproportionately women of color.[135] The pandemic also exacerbated the challenges in recruiting and retaining ECE staff.

Each standard that ACF proposes in this section is responsive to research, survey data, and Head Start administrative and internal data which collectively demonstrate that more attention must be paid to educator wellness and well-being. Evidence from the field shows that early childhood educators' mental and physical health and well-being are often neglected or overlooked. One survey administered during the COVID–19 pandemic found that teachers ranked ''more daily breaks and paid leave'' in the top five items needed to support their well-being.[136] Other research prior to the pandemic in a national sample and one in Oklahoma

[124] Kwon, K., Ford, T., Randall, K., Castle, S. (2021). *Head Start Teacher Paradox: Working conditions, well-being, and classroom quality.* The Happy Teacher Project: Johns Hopkins University and Oklahoma State University.

[125] The Happy Teacher Project. (2020). *Strengthening Health, Wellness, and Psychosocial Environments in Head Start: Technical Report 2020.* Johns Hopkins University and Oklahoma State University.

[126] Kwon, K., et al., (2022). Neglected elements of a high-quality early childhood workforce: Whole teacher well-being and working conditions. *Early Childhood Education Journal,* 50, 157–168.

[127] Jeon, L., & Ardeleau, K. (2020). Work climate in early care and education and teachers' stress: Indirect associations through emotion regulation. *Early Education & Development,* 31(7), 1031–1051; Jeon, L., Buettner, C., & Grant, A. (2018). Early childhood teachers' psychological well-being: Exploring potential predictors of depression, stress, and emotional exhaustion. *Early Education & Development, 29*(1), 53–69.

[128] Grant, A., Jeon, L. & Buettner, C. (2019). Relating early childhood teachers' working conditions and wellbeing in their turnover intentions. *Educational Psychology, 39*(3), 294–312.

[129] The Happy Teacher Project. (2020). *Strengthening Health, Wellness, and Psychosocial Environments in Head Start: Technical Report 2020.* Johns Hopkins University and Oklahoma State University.

[130] Markowitz, A., & Bassok, D. (2018). *Teacher turnover and child development in Head Start.* Paper presented at the Association for Public Policy Analysis and Management Conference. U.S. Department of Health and Human Services & U.S. Department of Education. (2016).

[131] Cassidy, D.J., Lower, J.K., Kintner-Duffy, V.L., Hegde, A.V., & Shim, J. (2011). The day-to-day reality of teacher turnover in preschool classrooms: An analysis of classroom context and teacher, director, and parent perspectives. *Journal of Research in Childhood Education, 25*(1), 1–23.

[132] Jeon, L., Buettner, C., Grant, A., & Lang, S. (2019). Early childhood teachers' stress and children's social, emotional, and behavioral functioning. *Journal of Applied Developmental Psychology, 61,* 21–32.; Jeon, S., Jeon, L., Lang, S. & Newell, K. (2021). Teacher depressive symptoms and child math achievement in Head Start: The roles of family-teacher relationships and approaches to learning. *Child Development,* 92(6), 2478–2495.; The Happy Teacher Project (2020).; Smith, S., & Lawrence, S. (2019). *Early Care and Education Teacher Well-Being: Associations with Children's Experience, Outcomes, and Workplace Conditions* (Issue March). *http://www.nccp.org/publications/pdf/text_1224.pdf.*

[133] Jeon, L., Buettner, C., Grant, A., & Lang, S. (2019). Early childhood teachers' stress and children's social, emotional, and behavioral functioning. *Journal of Applied Developmental Psychology, 61,* 21–32.

[134] Hanno, E., Gardner, M., Jones, S., & Lesaux, N. (2022). An ecological perspective on early educator well-being at the start of the COVID–19 pandemic. *Early Childhood Research Quarterly. https://doi.org/10.1016/j.ecresq.2022.02.002;* Kwon, K., Ford, T., Tsotsoros, J., Randall, K., Malek-Lasater, A., & Kim, S. (2022). Challenges in working conditions and well-being of early childhood teachers by teaching modality during the COVID–19 pandemic. *International Journal of Environmental Research and Public Health, 19,* 4919.; Markowitz, A., & Bassok, D. (2022). Understanding the well-being of early educators in the wake of the coronavirus pandemic: Lessons from Louisiana. *Early Childhood Research Quarterly. https://doi.org/10.1016/j.ecresq.2022.05.001;* Souto-Manning, M., & Melvin, S. (2022). Early childhood teachers of color in New York City: Heightened stress, lower quality of life, declining health, and compromised sleep amidst COVID–19. *Early Childhood Research Quarterly, 60,* 34–48.

[135] Kwon, K., Ford, T., Tsotsoros, J., Randall, K., Malek-Lasater, A., & Kim, S. (2022). Challenges in working conditions and well-being of early childhood teachers by teaching modality during the COVID–19 pandemic. *International Journal of Environmental Research and Public Health, 19,* 4919.; Souto-Manning, M., & Melvin, S. (2022). Early childhood teachers of color in New York City: Heightened stress, lower quality of life, declining health, and compromised sleep amidst COVID–19. *Early Childhood Research Quarterly, 60,* 34–48.

[136] Kwon, K., Ford, T., Tsotsoros, J., Randall, K., Malek-Lasater, A., & Kim, S. (2022). Challenges in working conditions and well-being of early childhood teachers by teaching modality during the COVID–19 pandemic. *International Journal of Environmental Research and Public Health, 19,* 4919.

found that teachers rated breaks as fifth and second, respectively, as needs for their workplaces.[137] ACF's proposed requirements in this section are intended to be responsive to these research findings and support Head Start staff well-being by ensuring they have access to regular, scheduled breaks, and to brief unscheduled breaks, which may be useful stress management strategies in infrequent circumstances when a teacher is feeling overwhelmed. Additionally, these proposed standards will strengthen supports for Head Start early educators during the on-going post-pandemic and long-term recovery of the workforce.

We seek public comment on how any of the proposed staff wellness requirements in this section may impact various communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Workforce Supports: Employee Engagement (§ 1302.92, § 1302.101)

Section 1302.101(a)(2) requires programs to implement a management system that provides regular and ongoing staff supervision to support individual professional development and continuous program quality improvement. Disengaged staff are not as emotionally committed to or proud of their work or organization, are less motivated, and are more eager to leave.[138] Disengagement negatively affects the well-being of staff, the quality of their work, and the attitudes held toward children.[139] Meaningful and effective employee engagement practices that promote clear roles and responsibilities are needed to improve the well-being of the workforce by helping identify and address job-related stress, burnout, and workload issues. These practices also empower the workforce, build respect in the workplace, and improve staff retention and overall job satisfaction. As such, we propose to revise this requirement to discourage staff supervision approaches that are primarily top-down by requiring programs to promote clear and reasonable roles and responsibilities for all staff with meaningful and effective employee engagement practices as part of their systematic approach to staff supervision. The changes proposed in this section are intended to be scaled to the size of the Head Start organization and are not anticipated to incur a large cost.

Specifically, in § 1302.101(a)(2) we propose to strike ''Provides regular and ongoing supervision to support individual staff professional development and continuous program improvement'' and replace it with ''Promotes clear and reasonable roles and responsibilities for all staff and provides regular and ongoing staff supervision with meaningful and effective employee engagement practices.''

Meaningful and effective employee engagement practices will vary among programs, but examples include discussions of explicit and implicit expectations, recognition for high-quality work, open communication between management and staff, conducting and responding to workplace climate surveys, responding to feedback, working in partnership with staff to identify and ameliorate any barriers to high-quality job performance that may exist including workload issues, formal and informal opportunities for discussions related to job satisfaction and performance, and having employee engagement inform professional development opportunities for staff. In general, these practices should aim to understand the expectations imposed on staff, identify and address barriers staff are experiencing in being able to fulfill their roles and responsibilities (*e.g.,* filling multiple roles, job-related stressors impacting job performance, unclear roles and responsibilities), and recognize high-quality work.

We also propose two revisions to § 1302.92(b), which requires programs to implement a systematic approach to staff training and professional development, in order to integrate meaningful and effective employee engagement practices and professional development. First, in § 1302.92(b) we propose to add the phrase ''and integrated with employee engagement practices in accordance with § 1302.101(a)(2).'' This revision builds on the proposed revision to § 1302.101(a)(2) and is intended to ensure programs implement an approach to staff training and professional development that is designed to be informed by input from staff, identified barriers to job performance, and other employee engagement practices. Training and professional development opportunities are more effective in transferring to practice when staff are opting into the training and receive support from their supervisor in the process.[140]

Second, we propose a change to § 1302.92(b)(1). Currently, § 1302.92(b)(1) requires that staff receive a minimum of 15 clock hours of professional development per year. For teaching staff, this professional development must meet the requirements described in section 648A(a)(5) of the Act, which specifies that the professional development must be high-quality, sustained, intensive, and classroom-focused in order to have a lasting positive impact on classroom instruction and teacher performance. The program must also regularly evaluate the professional development for effectiveness. Section 648A(f) of the Act requires programs to create, in consultation with an employee, a professional development plan for all full-time Head Start employees who provide direct services to children and requires that such plans are regularly evaluated for their impact on teacher and staff effectiveness. The agency and staff shall implement the plan to the extent feasible and practicable. Section 648A(f) of the Act has been implemented in practice through technical assistance and monitoring, but it has not been explicitly codified in the HSPPS. We propose to add new language to § 1302.92(b)(1) that codifies the requirement in section 648A(f) of the Act for the creation of individual professional development plans. This proposed change is anticipated to be cost neutral and is not a policy change or a new or modified requirement, since programs have always been held to this statutory requirement in practice. Further, programs are currently able to use their professional development and training and technical assistance funds to help staff earn their credentials and degrees.

We believe this proposed change is an important clarification as data from OHS monitoring findings show that programs are being cited for lacking professional development plans for their education staff. Indeed, analysis of internal data from fiscal year 2020–2022 reveals a top cited monitoring finding in OHS oversight reviews of programs was related to lack of appropriate

[137] Kwon, K., Ford, T., Randall, K., Castle, S. (2021). *Head Start Teacher Paradox: Working conditions, well-being, and classroom quality.* The Happy Teacher Project: Johns Hopkins University and Oklahoma State University.

[138] Gallup, I. State of the global workplace report. Gallup.com. *https://www.gallup.com/workplace/349484/state-of-the-global-workplace-2022-report.aspx.*

[139] Jennings, P.A., & Greenberg, M.T. (2009). The Prosocial Classroom: Teacher Social and Emotional Competence in Relation to Student and Classroom Outcomes. Review of Educational Research, 79(1), 491–525. *https://doi.org/10.3102/0034654308325693.*

[140] Salamon, J., Blume D., Orosz G., Nagy T. (2021). The interplay between the level of voluntary participation and supervisor support on trainee motivation and transfer. Human Resource Development Quarterly Volume 32, Issue 4, pages 459–481. *https://doi.org/10.1002/hrdq.21428.*

professional development plans for staff.[141] Additionally, as described previously, since the onset of the 2020 COVID–19 pandemic, many Head Start programs have had turnover in leadership and have suffered from on-going staffing shortages and vacancies in staff positions. The proposed addition to § 1302.92(b)(1) will remind new program leaders of this important requirement for their program staff to support the professional development of their workforce. It can also help improve staff retention by leveraging an existing requirement intended to support staff growth and professional development.

Mental Health Services (Subpart D; Subpart H; Subpart I)

Currently, programmatic requirements related to mental health appear in several areas of the standards, including § 1302 Subpart A, Subpart D, Subpart H, and Subpart I. In this NPRM, we propose several changes to these sections of the HSPPS to enhance and clarify the importance of mental health services for Head Start children, families, and staff. Mental health and social-emotional well-being during early childhood are foundational for family well-being and children's healthy development and early learning and are associated with positive long-term outcomes.[142]

We know that social-emotional difficulties impact up to 20 percent of children under the age of 5, and that over half of mental health disorders begin before age 14.[143] We also know that children and families experiencing poverty are more likely to encounter stressors linked to mental health challenges as well as experience barriers to accessing mental health services. Research findings specifically indicate that children and families living in high-poverty neighborhoods exhibit worse mental health outcomes compared to individuals living in low-poverty neighborhoods.[144] Therefore, a focus on social determinants of health, or the conditions in which individuals live, work and play, can lead to better mental health outcomes and prevent future mental illness.[145] Head Start programs are well positioned to support children and families experiencing poverty by strengthening the focus on mental health in the settings where children spend most of their day and where families are provided the services that they need to help their children succeed in school and in life.

In addition to children, the impact of poor adult mental health has also garnered national attention, including the importance of addressing mental health for the ECE workforce.[146] In 2021, 57.8 million adults (22.8 percent) were affected by mental illness and 46.3 million (16.5 percent) of people aged 12 and older had a substance use disorder.[147] We know that mental health of young children is intertwined with the mental health of the adults that care for them. We also know that early childhood experiences, like trusting relationships with caregivers in a stable, nurturing environment, aid in the development of skills that build resilience. Head Start is in a unique position to provide these experiences and extend them to the home environment. Fostering a child's relationship with adults in their life and providing them with the best environment to grow requires an intentional focus on both child and adult well-being. Head Start strives to do both.

Changes to the HSPPS related to mental health are needed to leverage and build on Head Start's capacity to promote wellness and prevent future mental health challenges for Head Start children, families, and staff. The approach taken in this NPRM aligns with efforts across HHS [148] to (1) increase mental health integration, coordination, and consultation in a range of settings outside traditional mental health service spaces; (2) create healthy environments that focus on promotion and prevention efforts across the lifespan; and (3) connect people to the care they need via an approach that engages high-risk populations in integrated mental health care through targeted outreach tailored to their needs.[149]

The proposed changes described here cut across multiple areas of the standards and serve to strengthen, clarify, and enhance existing Head Start requirements to highlight a comprehensive and integrated approach to elevate mental health across the entire Head Start program. Head Start programs are a conduit to mental health services for those most in need and are settings in which children spend a significant amount of time. With an emphasis on a holistic approach to healthy development, it stands to reason that the HSPPS should reflect the importance of this service in an integrated fashion. The proposed changes clarify what is meant by wellness promotion, affirm that mental health is included in health services provided in Head Start, strengthen language to integrate coordinating support for child and adult mental health, incorporate strengths-based language by reducing the focus on concerns or challenging behaviors related to mental health and adding a focus on supports and development of children, strengthen requirements to prevent and work towards eliminating all suspension and expulsions in Head Start programs, clarify expectations and responsibilities of the mental health consultant by aligning the definition of infant and early childhood mental health consultation with the Substance Abuse and Mental Health Services Administration (SAMHSA) and research in the field, and reduce barriers to obtaining mental health consultation services by clarifying staff qualifications and removing language that consent is needed by a parent as mental health consultants do not provide treatment.[150] Implementation of these changes will involve both updates to existing practice

[141] Data from narrative responses from monitoring reviews from fiscal years 2020–2022.

[142] *https://www.acf.hhs.gov/ecd/policy-guidance/dear-colleague-social-emotional-development-and-mental-health.*

[143] National Research Council and Institute of Medicine Committee. Preventing mental, emotional, and behavioral disorders among young people: progress and possibilities. Washington, DC: National Academies Press; 2009.

Brauner, C.B., & Stephens, C.B. (2006). Estimating the prevalence of early childhood serious emotional/behavioral disorders: Challenges and recommendations. Public health reports, 121(3), 303–310.

[144] Leventhal, T., & Brooks-Gunn, J. (2003). Moving to Opportunity: an Experimental Study of Neighborhood Effects on Mental Health. *American Journal of Public Health 93(9).* 1576–1582. doi: 10.2105/ajph.93.9.1576.

[145] *https://www.nami.org/Blogs/NAMI-Blog/August-2020/Ways-We-Can-Address-the-Social-Determinants-of-Mental-Health.*

[146] Otten, J.J., Bradford, V.A., Stover, B., Hill, H.D., Osborne, C., Getts, K., & Seixas, N. (2019). The culture of health in early care and education: workers' wages, health, and job characteristics. Health affairs, 38(5), 709–720.

[147] Substance Abuse and Mental Health Services Administration. (2022). Key substance use and mental health indicators in the United States: Results from the 2021 National Survey on Drug Use and Health (HHS Publication No. PEP22–07–01–005, NSDUH Series H–57). Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. *https://www.samhsa.gov/data/report/2021-nsduh-annual-national-report.*

[148] *Working to ensure that all young children and their caregivers have access to high-quality resources that equitably support social-emotional development and mental health.* U.S. Department of Health and Human Services, Administration for Children and Families, Early Childhood Development, 2022.

[149] *https://aspe.hhs.gov/sites/default/files/documents/4e2fff45d3f5706d35326b320ed842b3/roadmap-behavioral-health-integration.pdf.*

[150] Mental health consultation is a prevention-based approach that teams a mental health professional with early care and education staff and families. This team works on ways to help promote the social and emotional development of the young children in their care.

as well as new internal processes for programs. OHS will support programs as they implement these enhanced requirements through the robust Head Start training and technical assistance system.

1302 Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance

Section 1302.17 describes Head Start's policies that severely limit suspension and prohibit expulsion due to a child's behavior. Data with nationally representative samples of State-funded prekindergarten programs, including Head Start programs, have found that over 10 percent of preschool teachers expelled at least one preschooler in the previous year, which was three times the rate for K–12 students.[151] Suspension and expulsion practices have long-lasting negative impacts for young children and their families, including on children's later school attendance, academics, and family stress. Additionally, research has well documented that disproportionalities exist in suspending or expelling students who are young boys of color, children with disabilities, and children who are dual language learners.[152] For example, in the 2017–2018 school year there were about 2800 preschool suspensions, and African American boys received 43 percent of suspensions despite making up 18 percent of preschool enrollment.[153]

ACF has a focus on preventing use of suspension and expulsion in programs, and ensuring that any use of these disciplinary practices does not perpetuate disproportionalities across different groups of children, and many of the proposed changes to regulations codify this further. This NPRM retains the prohibition on expulsions and severe limitations on use of suspension, clarifying that suspension is a measure of last resort to allow the program time to put needed supports and accommodations in place. Additionally, several of the mental health related approaches proposed in this NPRM are targeted at building adult capacity to understand and respond to challenging behaviors associated with suspension/expulsion early and effectively, such as requiring staff to be trained to understand behavior and implement positive disciplinary strategies as well as effective implementation of mental health consultation.[154] The proposed changes to the suspension and expulsion section of the standards are intended to further our efforts to reduce the use of suspension and expulsion and clarify terminology and expectations related to suspension and expulsion practices.

First, we propose to add broad definitions of suspension and expulsion to § 1305.2 to provide clarity on which disciplinary practices are captured under these respective categories. The broader definitions proposed here align with Caring for our Children standards, which are developed in collaboration with experts and widely used in ECE settings, and the Head Start Center for Inclusion.[155] We propose to define expulsion as the permanent removal of a child from the learning setting or a requirement that a child unenroll in a program. We propose to define suspension as the temporary removal of a child from the learning setting including all reductions in the amount of time a child may be in attendance of the regular group setting, either by requiring the child to cease attendance for a particular period of time or reducing the number of days or amount of time that a child may attend. Requiring a child to attend the program away from the other children in the regular group setting is included in this definition. Requiring the parent or the parent's designee to pick up a child for reasons other than illness or injury is also included in this definition.

The goal of suspension should always be for the child to return to the least restrictive and most integrated educational environment safely and expediently. We do not provide guidelines for the specific length of time for suspensions because the appropriate time depends on many factors, such as the immediacy and severity of the safety concern and the complexity and availability of supports needed to facilitate the child's return to full participation. Suspensions should not be used indefinitely or repeatedly, and longer periods of suspension take away opportunities for children to develop the social and emotional skills that improve challenging behaviors in the long-term.[156] Programs should use the temporary suspension period to actively collaborate with families, mental health professionals, the multidisciplinary team responsible for mental health and others to develop a coordinated plan and timeline for supporting the identified child and their family to return to full participation. Programs should also engage with the child and family, mental health professionals, multidisciplinary team responsible for mental health, and other relevant staff, regularly during the temporary suspension period to ensure that the child continues to be supported during this time, such as through home visitation or community services, and to provide regular check-ins on the program's progress in implementing the collaborative plan.

The existing suspension standards in § 1302.17(a) already include many of the components of the approach described above. However, we propose to add language to clarify the expectations of the steps that should be taken before a suspension can be determined to be necessary, and that a program needs to thoroughly document plans related to suspension similar to how they document plans related to transferring a child to a setting that can better meet their needs. By documenting suspension practices, we intend to be better positioned to assess how and when disproportionalities in the use of suspensions may be occurring across different groups of children. Specifically, we propose to modify § 1302.17(a)(2) to say that a suspension must be used only as a resort where there is a serious safety threat that ''has not been'' reduced instead of ''cannot be'' reduced or eliminated to emphasize that the program should take active steps to attempt to reduce or eliminate the concern and demonstrate that these have not worked. Additionally, the current standard notes the provision of ''reasonable modifications'' which we propose to change to ''interventions and supports recommended by the mental health consultant'' to again emphasize that prior to a suspension being considered, it is expected that the program engages with the mental health consultant to apply and assess whether supports and interventions, such as use of visual aids or preferred seating, can have an impact. Finally, we add an additional phrase that reflects the

[151] Gilliam, W.S. (2005). Prekindergarteners left behind: Expulsion rates in state prekindergarten systems. New York, NY: Foundation for Child Development.

[152] Horowitz, M. (2015). Early Childhood Suspension and Expulsion. Center on Enhancing Early Learning Outcomes (CEELO). Retrieved from: *http://ceelo.org/wp-content/uploads/2015/08/ceelo_annotated_bib_expulsion_2015_08_final_web.pdf.*

[153] U.S Department of Education Office for Civil Rights (2021). An overview of exclusionary discipline practices in public schools for the 2017–18 school year. See *https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf.*

[154] Perry, D.F., Holland, C., Darling-Kuria, N., & Nadiv, S. (2011). Challenging behavior from child care: The role of mental health consultation (32, pp. 4–11). Zero to Three.

[155] *https://eclkc.ohs.acf.hhs.gov/children-disabilities/article/head-start-center-inclusion.*

[156] McCabe, L.A & Frede, E.C. (2007). Challenging behaviors and the role of preschool education. New Brunswick, NJ: National Institute for Early Education Research. Available: *nieer.org/wp-content/uploads/2016/08/16.pdf.*

intended purpose of a temporary suspension, ''and the program needs time to put additional appropriate services in place.''

In addition to the mental health consultant, we have added in § 1302.17(a)(3) that ''the multidisciplinary team responsible for mental health'' must also be part of the discussion before a program determines whether a temporary suspension is necessary. This new addition of a multidisciplinary team is discussed further in proposed changes to § 1302.45 below.

If a temporary suspension is deemed necessary by the program, we have added proposed language to 1302.17(a)(4) to clarify and strengthen existing standards regarding what a program must do to bring the child back to the program as expediently as possible. Specifically, we propose to add a statement to of § 1302.17(a)(4) that states a program must explore all possible steps and document all steps taken to address the behavior(s) and supports needed to facilitate the child's safe reentry and continued participation in the program. In outlining these steps, we propose to strengthen existing language in § 1302.17(a)(4)(i) to (iii) to further clarify and enhance the actions a program must take to reengage the child in program services. First, we propose to revise § 1302.17(a)(4)(i) by adding ''the multidisciplinary team responsible for mental health, and other appropriate staff'' to clarify that these are additional groups the program must continue to engage to support the child. Next, we propose to remove current § 1302.17(a)(4)(ii), which requires a written plan to document action and supports, as this is now incorporated into new language proposed for § 1302.17(a)(4), described previously. Next, we propose to redesignate § 1302.17(a)(4)(iii) as § 1302.17(a)(4)(ii) and further enhance this requirement by adding language that clarifies that home visits could be one of multiple additional services for the child. The revised § 1302.17(a)(4)(ii) reads ''Providing additional program supports and services, including home visits.'' Finally, we propose to redesignate § 1302.17(a)(4)(iv) as § 1302.17(a)(4)(iii) and enhance this standard with additional language that requires coordination with a child's individual family service plan (IFSP) or individual education plan (IEP), if appropriate. In the rare instance the program is unable to meet the needs of a child while they are in the learning setting, our intent is that these changes will provide sufficient clarity on how to return a child quickly to program services with the correct supports in place.

Furthermore, while Head Start prohibits expulsion, as stated in § 1302.17(b), we do know there are instances where there is a more appropriate placement for a child. In those instances, it is imperative that the child is not unenrolled from the Head Start program without having a more appropriate placement to attend that is prepared to provide services immediately. Therefore, we propose to add additional language to the end of § 1302.17(b)(3) to clarify that a program must work to directly facilitate the transition of the child to a more appropriate placement ''that can immediately enroll and provide services to the child.'' We also propose to add language to § 1302.17(b)(2) and (b)(3) to require that the multidisciplinary team responsible for mental health join in discussions of how to prevent an expulsion from occurring, as well as new language to require engagement of parents in § 1302.17(b)(2). Taken together, we believe these changes will ensure that the child is surrounded by the appropriate care team that can make decisions in the best interest of the child. It is particularly important that we incorporate parents early on as we know that high expulsion rates are an indicator that we are not helping parents and caregivers to support the positive social and emotional development that is foundational for positive future outcomes.[157]

ACF seeks public comment on whether the proposed definitions for suspension and expulsion are appropriate, as well as on the process proposed in order to support programs in determining whether a temporary suspension is warranted.

1302 Subpart D—Health Program Services

There are many barriers to mental health care, including stigmatization of mental health and concerns about availability of the behavioral health workforce.[158] By strengthening promotion and prevention efforts throughout the standards, we are seeking to provide a strong social-emotional foundation for children by being more intentional about the integration of mental health supports across all aspects of the Head Start program. We intend to reinforce that mental health is integral to many other aspects of the Head Start system and propose regulatory changes that utilize preventive approaches to mental health in other comprehensive service areas, such as health and family engagement. If programs have conversations about mental health early and often, they can also identify children, families, and staff with specific needs and intervene before more time and resource intensive care becomes necessary.

Subpart D outlines the program requirements to support the provision of high-quality health, oral health, mental health, and nutrition services. We propose to change the name of this section from ''Health Program Services'' to ''Health and Mental Health Program Services'' to include mental health more explicitly in the standards, affirm that mental health is a critical component of health, and to facilitate ease of access to standards that closely relate to mental health topics.

§ 1302.40 Purpose

This section describes the overarching purpose of health and mental health program services in Head Start. In paragraph (b) we propose to replace ''Health Services Advisory Committee'' with ''Health and Mental Health Services Advisory Committee'' to include mental health more explicitly in this requirement. The proposed change will clarify that mental health should be represented in conversations about health needs and services, including in the advisory committee. The proposed change would carry throughout the proposed standards for consistency, including in § 1302.42(b)(1)(i), § 1302.43(b)(4), and § 1302.94(a).

§ 1302.41 Collaboration and Communication With Parents

Section 1302.41 requires Head Start programs to collaborate with parents as partners in the health and well-being of their children and communicate timely with parents about their children's health needs and development concerns.

Throughout § 1302.41, we propose to add ''mental health'' wherever health is mentioned to clarify that mental health is an integral part of health. Incorporating mental health into conversations about a child's development and health normalizes and destigmatizes talking about mental health. These proposed regulatory changes are intended to increase conversations about mental health strengths and areas of concern early on with parents so that everyone has the information and tools to support the child's mental health across different settings, contributing to reducing barriers to accessing care and increasing

[157] *https://www.zerotothree.org/preventing-expulsion-from-preschool-and-child-care/.*

[158] *https://www.gao.gov/assets/gao-23-105250.pdf.*

the chance that future mental illness will be prevented.

§ 1302.42 Child Health Status and Care

Section 1302.42 describes the requirements of programs with respect to a child's health status and care, including the timelines by which programs must ensure a child has an ongoing source of continuous, accessible health care; determine if a child is up to date on a schedule of age-appropriate care; and obtain or perform evidence-based vision and hearing screenings. We propose two changes to this section.

First, we know that many young children with mental health issues do not have them identified by the time they enter elementary school,[159] and are therefore losing a critical opportunity to receive early interventions and supports. The current regulations only specify that programs should ensure that children are up to date with medical, developmental, and oral health care schedules. Regular screening for mental health concerns is also necessary to ensure children and families with needs are identified early so that they can access appropriate interventions. Therefore, in § 1302.42 (b)(1)(i), we propose to add ''mental health'' to align with the purpose and intent of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit that provides comprehensive and preventive health care services, including mental health, for children who are enrolled in Medicaid.[160]

Second, in § 1302.42 (b)(4), we propose to add ''relevant developmental or mental health concerns'' to clarify that when a program is identifying a child's nutritional health needs, that developmental and mental health concerns should also be considered. This proposed addition is intended to capture best practices in the field, which acknowledge that developmental and mental health factors such as sensory aversions and feeding disorders play a role in nutritional health.[161]

§ 1302.45 Child Mental Health and Social and Emotional Well-Being

This section outlines what programs must do to support a culture that promotes children's mental health and outlines the scope of responsibilities of mental health consultants. For reasons stated at the outset of this section, Head Start has the capacity to reach people who are at higher risk for experiencing stressors and barriers to care and provide integrated preventive mental health supports into comprehensive services provided for the child and family. We propose numerous changes to § 1302.45 to strengthen, clarify and enhance existing Head Start mental health requirements, including intentionally integrating more staff attuned to the mental health needs of children and families by requiring a multidisciplinary team responsible for mental health within the program. This multidisciplinary team is intended to both destigmatize mental health and increase the capacity and reach of the mental health consultant. Other proposed changes range from important revisions to language to proposed changes to the approach to service delivery. We describe each of these changes in turn.

First, we propose to change the title of this section from ''Child mental health and social and emotional well-being'' to ''Supports for mental health and well-being.'' Research demonstrates that child well-being is inextricably linked to adult well-being and in order to address child mental health, we need to address the mental health of caregivers as well, including both staff and parents.[162]

Next, we propose four changes in § 1302.45(a). First, in the overarching requirement, we propose to change ''Wellness promotion'' to ''Program-wide wellness supports'' to align with the new title of this section and to clarify that programs should provide wellness supports across the program. Second, we propose to remove ''children's'' in this section to clarify that program-wide wellness supports are intended to promote the wellness of both children and adults. Third, we also propose to add ''safety'' in the description of a program-wide culture because wellness is dependent on meeting basic needs, including safety, and because it aligns with language in other standards which refer to children's health and safety.[163]

Fourth, to clarify what programs must do to support a program-wide culture that promotes mental health, social and emotional well-being, and overall health and safety, we add new guidance to § 1302.45(a) that a program must ''have a multidisciplinary team responsible for mental health.'' In addition to integrating more people into the conversation to address mental health, the multidisciplinary team responsible for mental health is also intended to develop and implement mental health efforts and supports that are not related to consultation, and to facilitate communication across service areas and systems in Head Start. The formation of such a team also aligns with recommendations by infant and early childhood consultation experts to have a group that can provide strategic planning, guidance and coordination related to mental health.[164] By requiring a multidisciplinary team focused on mental health, we also aim for mental health supports and interventions, which have the potential to be more sustainable in programs. Currently, if the program relies on a consultant to provide all mental health related services, issues such as the availability of the mental health workforce and turnover may have a larger impact on the continuation of quality services.

Multidisciplinary means the involvement of two or more separate disciplines or professions that actively work in tandem with parents to provide supports for children and families.[165] For example, a mental health team may be comprised of a family service worker, teacher, mental health manager, disability service coordinator, and health specialist. This list is not intended to be exhaustive, and the intent is for programs to have flexibility in determining the appropriate

[159] Glascoe, F.P. (2005). Screening for developmental and behavioral problems. Mental retardation and developmental disabilities research reviews, 11(3), 173–179.

[160] *https://www.medicaid.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/index.html.*

[161] Zero to Three (2016). DC: 0–5: Diagnostic Classification of mental health and developmental disorders of infancy and early childhood. Washington, DC; American Psychiatric Association. Diagnostic and statistical manual of mental disorders (DSM–5) American Psychiatric Pub; 2013.

[162] Wolicki SB, Bitsko RH, Cree RA, et al. Associations of mental health among parents and other primary caregivers with child health indicators: Analysis of caregivers, by sex—National Survey of Children's Health, 2016–2018, Adversity and Resilience Science: Journal of Research and Practice. Published online April 19, 2021. Lowry C, Stegeman I, Rauch F, Jani A. Modifying the school determinants of children's health. J R Soc Med. 2022;115(1):16–21. doi:10.1177/01410768211051718. Jeon L, Buettner CK, Grant AA, Lang SN. Early childhood teachers' stress and children's social, emotional, and behavioral functioning. Journal of Applied Developmental Psychology. 2019;61:21–32. doi: 10.1016/j.appdev.2018.02.002.

[163] SAMHSA (2016). Creating a Healthier Life: A Step-by-Step Guide to Wellness. Publication ID: SMA16–4958. Available online at *https://store.samhsa.gov/product/Creating-a-Healthier-Life/SMA16-4958.*

[164] Green, B. & Allen, M.D. (2012). Developing and Implementing a Program wide Vision for Effective Mental Health Consultation. Center for Early Childhood Mental Health Consultation. *https://www.iecmhc.org/documents/CECMHC_AdministratorsToolkit.pdf.*

[165] For a federally accepted definition of 'multidisciplinary,' see: *https://sites.ed.gov/idea/regs/c/a/303.24.*

composition of the multidisciplinary team. The rationale for this change is that providing program-wide wellness supports cannot rely on one individual such as a mental health consultant, and that many individuals working in Head Start already have expertise that can benefit program-wide wellness support efforts. Based on our experience overseeing the implementation of the Head Start program across the country, recipients that are most effective at supporting mental health create a team comprised of multiple individuals that may work with children, families, or staff in different capacities. We also want to acknowledge that many Head Start programs already have this practice in place in the form of case conferencing, which will facilitate the implementation of this practice as described in the proposed regulation. Furthermore, the establishment of a formal multidisciplinary team focused on mental health will support programs in the implementation of the other enhancements to mental health services described in this proposal.

In addition to the changes to the overarching requirement in paragraph (a), we also propose changes and additions to the provisions for what activities are expected from the program-wide wellness supports, for a total of six provisions. The first provision, new § 1302.45(a)(1), describes that the multidisciplinary team responsible for mental health ''coordinates supports for adult mental health and well-being including engaging in nurturing and responsive relationships with families, engaging families in home visiting services, and promoting staff health and wellness, as described in § 1302.93.'' We believe this language clarifies how a program most effectively addresses adult mental health.

For the second provision, we propose to redesignate current § 1302.45(a)(1) to become § 1302.45(a)(2) with the revised language describing that the multidisciplinary team's role is to ''coordinate'' as opposed to ''provide supports.'' We then propose language changes to describe what supports the team is responsible for coordinating, including supports for positive learning environments, supportive teacher practices and strategies to support children's mental health concerns. Specifically, we propose to remove ''effective classroom management'' since this specific term is less aligned with a strengths-based approach and can contribute to stigma related to a child's behavior. Instead, we keep the broader strengths-based term of positive learning environments, as classroom management is one part of creating a positive learning environment, and the need to monitor and effectively respond to child behavior applies across program options. We also make clear that these positive learning environments are for ''all children''. Finally, we propose to replace ''challenging behaviors'' with ''behavioral or mental health concerns'' to align with mental health language in other sectors that are less stigmatizing and more reflective of the concern programs are addressing within infant and early childhood mental health.

We propose to remove the current § 1302.45(a)(3), which states that ''a program must obtain parental consent for mental health consultation services at enrollment'' as this phrasing implies that mental health consultants provide treatment when, in fact, they provide consultation services, which do not require parental consent because the child is not directly receiving the service. Further, consistent with how programs communicate with parents about health and developmental services, we propose to include mental health services (which can include consultation services) in § 1302.41(b)(1).

For the third provision, in new paragraph § 1302.45(a)(3), we propose to redesignate language from the current (a)(2) and further revise the language by replacing ''schedule of sufficient and consistent frequency'' with ''no less than once a month'' to specify, at a minimum, how often mental health consultation services should be provided in the program in order for partnerships with staff and families to be timely and effective. Experts from SAMHSA's Center of Excellence in Infant and Early Childhood Mental Health Consultation recommend that mental health consultation services should be provided at least every other week, though considerations such as the size of the program and availability of services in the community can also impact the suggested frequency of consultation.[166] We recognize that a biweekly frequency may not be feasible for all programs at this time, particularly in the context of larger concerns about recruiting and retaining an adequate mental health workforce.[167] Therefore, we propose a minimum monthly frequency for these services, which we believe provides a regular enough schedule of services to allow for opportunities to embed the consultant into the program and therefore provide more effective services. ACF specifically requests comment on this section regarding whether ''no less than once a month'' as a minimum frequency is appropriate to meet the mental health consultation needs of programs. We also add to new (a)(3) that the multidisciplinary team responsible for mental health ''examines the approach to mental health consultation on an annual basis to determine if it meets the needs of the program'' in order to provide continuous quality improvement to ensure that the systems set up in the program are meeting the mental health needs of adults and children in the program. Examples of ways programs may want to examine their approach could include determining whether the program size and needs are being met by the frequency of consultation services or whether the program needs to change who is targeted to receive consultation services.

For the fourth provision, we propose an entirely new § 1302.45(a)(4) that requires that the multidisciplinary team responsible for mental health ''ensures that all children receive adequate screening and appropriate follow up and the parent receives referrals about how to access services for potential social, emotional, behavioral, or other mental health concerns, as described in § 1302.33.'' This language clarifies the responsibility of the program to ensure screenings related to social and emotional milestones that impact mental health are completed or obtained from an appropriate provider. Additionally, the responsibility of the program is to ensure appropriate follow up and referral for necessary supports or services takes place, as warranted, which may be done in coordination with health and other early childhood systems.

For the fifth provision, we propose an entirely new § 1302.45(a)(5) where we propose to add that the multidisciplinary team responsible for mental health must facilitate coordination and collaboration between mental health and other relevant program services, including education, disability, family engagement, and health services. We believe this language clarifies and emphasizes that mental health should be considered holistically along with physical health and requires a program-wide approach that includes coordinating across program services.

Finally, the sixth provision in § 1302.45(a) is a redesignation of an existing provision. We propose that the

[166] U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, National Center on Parent, Family, and Community Engagement. (2019). *Infant and Early Childhood Mental Health Consultation: Engaging with Families.*

[167] *https://www.gao.gov/assets/gao-23-105250.pdf.*

current § 1302.45(a)(4) be redesignated to new § 1302.45(a)(6) to accommodate the changes described in the previous paragraphs.

Next, we propose numerous changes to paragraph (b) of § 1302.45 and its provisions. We recognize there is an ongoing need to strengthen and build a more diverse behavioral health workforce. We also recognize that mental health consultants with specific early childhood expertise are particularly challenging for programs to identify and secure. To address this barrier and facilitate the implementation of the proposed enhancements to other mental health policies, the proposed regulation changes in § 1302.91(e)(8)(ii), discussed later in this section, specifically allow programs to secure mental health consultation from professionals who are in the process of obtaining licensure and are under the supervision of a licensed mental health professional. We also include proposed language that reflects the existing literature on effective practices in infant and early childhood consultation.

Together, the proposed changes in § 1302.45(b) are intended to align the standards with best practices in infant and early childhood mental health consultation.[168] Most notably, the changes are intended to require that programs focus consultation services on promotion and prevention efforts by broadening and building programmatic and adult capacity to support the mental health of the children for whom they care. We also add language in this section that clarifies expectations and responsibilities of the mental health consultant by aligning with the definition of the consultation model that appears in research as well as in other Federal entities such as the Substance Abuse and Mental Health Services Administration. We include general types of consultation services that can be leveraged within programs in the six provisions that follow. However, effective consultation occurs when there is ongoing collaboration between consultant and consultee and consideration of individualized strengths and needs.[169]

In the first provision, § 1302.45(b)(1), we add to the existing language to clarify a central type of mental health consultation with the program is focused on promotion and prevention of mental health concerns, in addition to identifying and supporting existing mental health concerns.

For the second provision, § 1302.45(b)(2), we propose several changes that clarify that mental health consultants can consult with any staff who work with children and families, which may include teachers, family child care providers, or home visitors, and describe the general goals of this type of consultation. This change aligns with our approach of ensuring that every adult who works with children can benefit from understanding and receiving supports related to mental health. First, we propose to replace ''teachers, including family child care providers'' with ''child and family services staff'' to clarify that mental health consultation can occur with any staff member who works with children and families. For example, some programs may determine with their consultant that they would like to increase consultation targeted at engaging home visitors, given that program's specific needs. We also propose to remove the phrase ''improve classroom management and supportive teacher practices'' to align with the clarification that mental health consultation is not solely focused on specific classroom or teaching practices. Next, we propose to replace ''through strategies that include using classroom observations and consultations to address teacher and individual child needs and creating physical and cultural environments'' with ''implement strategies that build nurturing and responsive relationships and create positive learning environments.'' We believe this language more clearly aligns with the intended role of a mental health consultant to help child and family staff implement strategies that will build strong relationships and positive learning environments, which should not be limited only to conducting observations. We also note that building positive learning environments may still include activities such as classroom management, supportive teacher practices, and creating positive physical and cultural environments. Our intention is to encourage flexibility and to acknowledge that there are many ways to build relationships and learning environments. Finally, we also propose to replace the phrase ''functioning'' with ''development of all children'' to specify that when working with infants and toddlers as well as preschoolers, the focus is on social and emotional development and creating environments and relationships that have the capacity to help young children grow in these foundational skills.

In the third provision, § 1302.45(b)(3), we propose to replace ''other staff, including home visitors'' with ''staff who have contact with children'' to clarify that the mental health consultants can provide consultation to any staff that have contact with children as needed, including, for example, transportation staff or food services staff. Our rationale for this change is to elevate that any staff who have contact with children play an important role in promoting young children's mental health and wellness. We also propose to remove ''to meet children's mental health and social and emotional needs through strategies that include observation and consultation'' as mental health consultation is not a strategy of consultation. Instead, we propose to add the elements outlined in the current § 1302.45(b)(4) to § 1302.45(b)(3), including the existing phrase ''prevalent child mental health concerns; internalizing problems such as appearing withdrawn and externalizing problems such as challenging behaviors'', which we propose to further revise. We propose to clarify what is meant by ''addressing'' prevalent child mental health concerns in the current § 1302.45(b)(4) by adding to § 1302.45(b)(3) ''to understand and appropriately respond to.'' Finally, we propose to revise and expand what is meant by prevalent child mental health concerns by revising that phrase to ''prevalent child mental health concerns, including internalizing problems such as appearing withdrawn, externalizing problems such as behavioral concerns; and how exposure to trauma and substance use can influence risk''.

In a new fourth provision, § 1302.45(b)(4), we use language from the current § 1302.45(b)(5) and propose to replace ''parents'' with ''families'' to expand with whom the consultant can provide consultation within a child's family unit. We also propose to add the phrase ''or supports'' to clarify that mental health consultation is not limited to accessing interventions. Furthermore, we propose to add ''including in the event of a natural disaster or crisis'' to clarify that mental health consultants are vital in emergency, preparedness, response and recovery.

Finally, the last provisions of 1302.45(b) are intended to highlight two

[168] Duran, F. et al. (2009). What Works?: A Study of Effective Early Childhood Mental Health Consultation Programs. Washington, DC: Georgetown University Center for Child and Human Development.; Kaufmann, R. et al. (2012). Creating Practice-Based Principles for Effective Early Childhood Mental Health Consultation Services. Washington, DC: Georgetown University Center for Child and Human Development.

[169] Kaufmann, R., Perry, D., Irvine, M., Duran, F., Hepburn, K., & Bruno, A. (2012. Creating Practice-Based Principles for Effective Early Childhood Mental Health Consultation Services. Center for Child and Human Development, Georgetown University.

situations in which involving a mental health consultant is crucial. Expulsion and suspension, as reviewed previously, can have long-lasting impacts on stress and mental health of children and families and therefore Head Start has prohibited or severely limited these disciplinary practices. The proposed changes require the program to engage the mental health consultant so that supports and accommodations are in place to ensure children's safe and full participation in the program. Specifically, in the fifth provision, § 1302.45(b)(5), we propose to use language from the current § 1302.45(b)(6) and add ''the program'' to clarify that implementation of policies to limit suspension and prohibit expulsion would occur in consultation with the program.

Similarly, we recognize that child safety incidents can negatively impact the mental health of children and their families, as well as their relationships with the program. Therefore, we propose to add a sixth provision, § 1302.45(b)(6), which requires a program to support the well-being of children and families involved in any significant child health, mental health, or safety incident described in § 1302.102(d)(1)(ii). As health and safety are a part of well-being, it falls within the role of a mental health consultant to ensure that the program, affected staff, child, and/or family members are connected to appropriate supports if an incident impacting a child's health and safety occurs.

§ 1302.46 Family Support Services for Health, Nutrition, and Mental Health

Section 1302.46 requires programs to collaborate with families to promote children's health and well-being and describes what that collaboration must include. We propose several changes to this section. These proposed changes are intended to integrate the preventive approach to mental health into family support services by using more strengths-based language, providing opportunities to engage families in discussions about mental health even when there is not an identified problem, and ensuring the mental health of parents is also a function of family support services. First, in paragraph § 1302.46(b)(1)(iii), we propose to replace ''substance abuse problems'' with ''substance use concerns'' to use language that is person-centered and destigmatizing. We also propose to remove ''perinatal'' before ''depression'' and add ''anxiety'' to provide a more comprehensive description of what is meant by common parent mental health concerns.

Second, in § 1302.46(b)(1)(iv), we propose to remove ''identify issues related to child mental health and social and emotional well-being, including observations and any concerns about their child's mental health'' and replace it with ''information related to their child's mental health with staff, including.'' We believe that this language clarifies a strengths-based approach to mental health where parents are not expected to identify issues with child mental health and that the focus of collaboration with parents is to help them respond appropriately to their individual child.

Third, in § 1302.46(b)(2), we propose to add ''and mental health systems'' to clarify that a program must support parents' navigation of mental health systems in addition to the health system. The purpose of this change is to acknowledge that navigation of health and mental health systems may be complex for families served by Head Start. The intent is to clarify our expectation that Head Start programs assist families in navigating these systems, which will ultimately benefit the family beyond their time in Head Start. Finally, we also propose a new § 1302.46(b)(2)(iv) that reads ''in providing information about how to access evidence-based mental health services for young children and their families, including referrals if appropriate'' to clarify what is meant by helping parents navigate the mental health system.

1302 Subpart H—Services to Enrolled Pregnant Women and People

Section 1302.81 describes the prenatal and postpartum information, education, and services programs must provide enrolled pregnant women and people, fathers, and partners or other relevant family members. Perinatal mental health conditions are experienced in up to 20 percent of pregnancies and can have significant impacts on children and families.[170] There is increasing recognition that depression is not the only mental health condition that can be exacerbated by or emerge during the perinatal period, and that mental health concerns can impact family members who are not pregnant.[171] Therefore, we propose changes in § 1302.81 that are intended to broaden the scope of awareness of the mental health information and education that may be helpful to provide to expectant families. Additionally, our proposed changes more explicitly recognize ties between social support and mental health and call for programs to ensure that social support is part of prenatal and post-natal services for enrolled families.

More specifically, we propose four changes to § 1302.81(a) to highlight potential services related to mental health and to promote language that is more inclusive of family members and social supports. First, we propose to remove the word ''relevant'' that currently precedes ''family members.'' This change is intended to be inclusive of different family compositions, clarify that any family member identified by the enrolled pregnant woman or person may be eligible to receive such information, and make clear that a program does not have to determine whether a family member is relevant. Second, we propose to revise the phrase ''benefits of breastfeeding'' to ''including breastfeeding'' and relocate it to earlier in the standard to clarify that this is a component of ''the importance of nutrition.'' The purpose of this change is to clarify that breastfeeding, in addition to other forms of healthy infant feeding, is one aspect of nutrition when programs are providing prenatal and postpartum information. We also propose in § 1302.81(a) to move ''parental depression'' from the list of information, education, and services to a newly created paragraph § 1302.81(b) focused on mental health, which is discussed in the following paragraph. We also propose to add ''and the benefits of substance use treatment'' to the list of topics. Finally, we propose to add ''mothers'' to the list of family members a program must provide information to, to be inclusive of women who have already given birth.

We further propose to redesignate the current § 1302.81(b) to § 1302.81(c) and insert a new § 1302.81(b). The proposed new § 1302.81(b) requires programs to support pregnant women, mothers, fathers, partners, or other family members to access mental health services, including referrals, as appropriate, to address concerns including perinatal depression, anxiety, grief or loss, birth trauma, and substance use. This language captures common mental health concerns that can arise during the perinatal period.[172]

[170] Howard, L.M., & Khalifeh, H. (2020). Perinatal mental health: a review of progress and challenges. *World Psychiatry, 19*(3), 313–327.

[171] Rao, W.W., Zhu, X.M., Zong, Q.Q., Zhang, Q., Hall, B.J., Ungvari, G.S., & Xiang, Y.T. (2020). Prevalence of prenatal and postpartum depression in fathers: A comprehensive meta-analysis of observational surveys. *Journal of affective disorders, 263,* 491–499. *https://doi.org/10.1016/j.jad.2019.10.030.*

[172] Maternal Mental Health Leadership Alliance. (July 2020). *Maternal Mental Health Overview.* Fact Sheet available on online at: *www.mmhla.org/fact-sheets* Maternal Mental Health Leadership Alliance.

Finally, in redesignated § 1302.81(c), we propose to add ''pregnant women's'' after ''A program must also address'' to clarify whose needs are being addressed. We also propose to add ''social'' before emotional well-being to provide consistency with other language throughout the HSPPS. Finally, we propose to add ''partner, or other family member'' to clarify that programs must address the potential benefits of building supports and engagement with other family members in addition to fathers.

1302 Subpart I—Human Resources Management

§ 1302.91 Staff Qualification and Competency Requirements

Section 1302.91 establishes the staff qualifications and competencies for all staff, consultants, and contractors engaged in the delivery of program services. We propose two changes in § 1302.91(e)(8)(ii) that pertain to mental health consultants and align with our goals of reducing barriers to securing consultants while maintaining effective consultation services. First, we propose to remove ''certified'' and replace it with ''under the supervision of a licensed'' to align with qualifications of mental health consultation in the field. Second, we propose to remove ''if available in the community.'' We believe that clarifying that mental health consultants can include individuals who are working under the supervision of another licensed individual will open avenues to a larger pool of mental health consultants to choose from and provide opportunities to build the mental health workforce in the ECE field. We also know that in recent years, access to telehealth services has expanded and overall use of telehealth modality for services has become more prevalent.[173] Even if a consultant cannot be on site, teleconsultation services can be utilized to work with adults in the program. Finally, striking the ''if available'' language is intended to emphasize that mental health consultation is vital to providing high quality comprehensive services in Head Start programs.

§ 1302.93 Staff Health and Wellness

As described in the earlier section, *Workforce Supports: Staff Wellness,* § 1302.93 outlines requirements of programs in the area of staff health and wellness with § 1302.93(b) speaking specifically to mental health and wellness information for staff. We propose to expand on these requirements to align with the goals described in the earlier sections *Workforce Supports: Staff Wellness* and *Workforce Supports: Employee Engagement.* These changes are intended to further amplify the importance of an intentional focus on staff wellness to improve staff well-being, reduce burnout, and improve retention, as well as to promote high-quality services for children and families.

Specifically, we propose to add a new § 1302.93(e) that states that a program should cultivate a program-wide culture of wellness that empowers staff as professionals and supports staff to effectively accomplish their job responsibilities in a high-quality manner, in line with the requirement at § 1302.101(a)(2). We believe this language clarifies that program-wide wellness supports extend to staff and that these supports include addressing program management such as implementing positive employee engagement practices, opportunities for training and professional development and ongoing supervisory support.[174] Indeed, a recent report from the U.S. Surgeon General highlights the importance of employers focusing intentionally on the mental health and well-being of their employees. The report establishes a framework for workers' mental health with a focus on five essential areas including, creating connection and community in the workplace; protecting workers from physical and mental harm; providing intentional supports for work-life balance including paid leave; providing opportunities for growth and career advancement; and making employees feel valued in their roles in the workplace.[175]

Taken together, ACF believes the proposed changes discussed in the *Mental Health Services* section will greatly improve services for children, families, and staff. We seek public comment on how any of the proposed mental health requirements in this section may impact various communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Modernizing Head Start's Engagement With Families (§ 1302.11; § 1302.13; § 1302.15; § 1302.34; § 1302.50)

In Head Start's nearly 60-year history, programs have cultivated trust with the public. However, ACF acknowledges there are areas that could benefit from time-saving improvements and much-needed efficiencies. Below, we outline several areas in the HSPPS where we would like to draw specific attention to and elevate the need for programs to dedicate time, attention, and resources to making improvements in the efficiency of delivering services.

Section 1302.11 describes the requirements programs must follow when completing their community needs assessment. ACF believes this is an area where we should require programs to identify the best and most efficient ways of communicating with families who are both currently enrolled and prospective families who might be eligible. Specifically, we propose a new (v) under § 1302.11(b)(1) that requires programs to identify communication methods and modalities that best engage with prospective and enrolled families of all abilities. This ensures that programs will use the community needs assessment as a method to determine the optimal communication modalities (be it digital through text messaging software, improved websites, automated phone calls or phone lines that provide program updates, etc.) that families prefer.

Second, § 1302.13 outlines the requirements for recruiting children to a Head Start program. We propose to include specific language regarding the usage of modern technologies in the program's recruitment strategies, and we propose to include a specific phrase on reducing family burden during the enrollment process. We envision programs utilizing information they gather from current families to learn about ways they can reduce unnecessary paperwork during the enrollment process. We propose to require that Head Start programs examine their current enrollment processes and determine ways to streamline and improve their strategies. Specifically, we propose to edit § 1302.13 to clarify that programs must use modern

(June 2021). *Dads and Depression.* Fact Sheet available on online at: *www.mmhla.org/fact-sheets.*

[173] Chu, R.C., Peters, C., De Lew, N., and Sommers, B.D. State Medicaid Telehealth Policies Before and During the COVID–19 Public Health Emergency (Issue Brief No. HP–2021–17). Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, July 2021. *https://aspe.hhs.gov/reports/state-medicaid-telehealth-policies.* Karimi, M., Lee, E.C., Couture, S.J., Gonzales, A.B., Grigorescu, V., Smith, S.R., De Lew, N., and Sommers, B.D. National Trends in Telehealth Use in 2021: Disparities in Utilization and Audio vs. Video Services. (Research Report No. HP–2022–04). Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. February 2022.

[174] *https://www.cdc.gov/workplacehealthpromotion/planning/leadership.html; https://aspe.hhs.gov/sites/default/files/private/pdf/76661/rpt_wellness.pdf.*

[175] U.S. Surgeon General. (2022). The U.S. Surgeon General's Framework for Workplace Mental Health & Well-Being. U.S. Department of Health and Human Services.

technologies to encourage and assist families in applying for admission to the program, and to streamline the application and enrollment process, while ensuring families without access to technology have equitable access to the program.

Section 1302.15 contains requirements related to enrolling new families into the Head Start program. We propose the addition of a new paragraph (g) that requires a user-friendly enrollment process. Programs must regularly examine their enrollment processes and implement any identified improvements to streamline the enrollment experience for families. This new provision would require programs to establish new procedures, or update current procedures, that are streamlined and efficient and keep the end-user in mind. This provision would also require programs to regularly update these procedures to keep up with latest innovative practices.

Section 1302.34 describes parent and family engagement in education services. We propose to add a new subparagraph (9) to § 1302.34(b) that clarifies that communication methods and modalities used by the program should be the best available for engaging families of all abilities, including currently enrolled families as well as prospective families. These changes would ensure that programs are consulting and engaging with current parents and families to be involved in the methods the program uses to communicate with both prospective families and enrolled families of all abilities. Parents and families may have suggestions for how to improve communication channels, methods or modalities, or for potential innovations. Head Start's customers are the children and families it serves. Including their voices in the creation of processes and communication streams is imperative to making improvements to efficiencies.

The final section that we propose updates to is § 1302.50, Family engagement. We propose to modify the purpose statement in § 1302.50(a) by adding a sentence at the end that states, ''This includes communicating with families in a format that is most accessible.'' This section of the HSPPS requires programs to serve both the child and their family in innovative two-generation approaches. Our proposed addition would require programs to also address communication methods and determine the most efficient and accessible format that families prefer and that may be necessary to address the needs of family members who have limited English proficiency or who are individuals with disabilities.

We expect that many Head Start programs are already engaging in several of these strategies to improve their communication methods and reach families using the modalities and methods that are easiest for them, though some programs may need to make bigger changes to meet this proposed standard. However, overall, we anticipate minimal costs associated with this new requirement. Importantly, ACF would like to ensure that all programs are implementing these strategies equitably and universally. ACF recognizes that what works for one community may not work for another, so programs are tasked with the challenge of meeting the unique needs of the communities they serve. ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities. Additionally, ACF requests comments on what new and innovative approaches or methodologies programs might use to fulfill this requirement, as well as potential costs associated with new approaches.

Community Assessment (§ 1302.11)

Section 1302.11(b) requires Head Start programs to conduct a community assessment to design a program that meets community needs and builds on strengths and resources. The current requirement describes a broad and comprehensive assessment of community needs, strengths, and resources and specifies the minimum data Head Start programs must use in this process. The community assessment must be done at least once during a 5-year grant period with an annual update of significant changes.

We recognize that many Head Start programs utilize the community assessment to inform the design of the program to a great extent. However, Head Start programs and others from the field have raised concerns with the requirements as currently written. First, the standards do not clearly articulate the purpose of the community assessment or the purpose and scope of the annual update. The requirement lists the data a program must collect and analyze without identifying the overarching goals of the endeavor. Second, there is concern that in some cases, programs approach the community assessment as an unnecessarily detailed community assessment with overly complex analytical methodologies. Third, some community members express concern about the cost of the requirement. These concerns are related; the cost can be particularly great, for example, if a program deploys time-consuming surveys using complex analytical techniques. Additionally, some programs use program funds to hire demographers and analysts to conduct community assessments, which is not a concern in itself. However, the costs of this work could balloon if the scope of project is too exhaustive and complex and does not efficiently leverage existing available data. These concerns combined can cause costly barriers to some programs being able to use their community assessment data effectively to guide programmatic decisions as intended. Changes are proposed to this section to promote clarity on the intent of the community assessment, align with best practices, incorporate feedback from programs, and increase the effectiveness in how the community assessment is used to inform key aspects of program design and approach.

In this section, we propose new language to be specific on the intended outcomes of the community assessment and requiring programs to be strategic in what data is collected and how it will be used to achieve those intended outcomes. This better reflects best practices to collect meaningful data and use it with purpose. We also propose new language to ensure programs assess readily available data on their community that provides usable information on the community for the grant recipient to design a program that meets the needs in the community. Altogether, these revisions direct programs to more effectively focus resources allocated to their community assessment on areas that matter most for program design, enrolling and serving the most in need in the community, what services are provided, and how or by whom families are served including which community strengths and resources are leveraged in service delivery.

Specifically, we propose to split current § 1302.11(b)(1) into two paragraphs in order to expand on the purpose of the community assessment before detailing the data that programs are required to collect and utilize. Section 1302.11(b)(1) has been revised to articulate the goals of the community assessment and is designed to clarify the purpose and intended outcomes of the community assessment. We propose to add a new (i) to (iv) which describe in more detail the objectives of community assessment which include: identifying who programs will serve and their

associated risk factors; how they will serve them in a manner that reflects their needs and diversity, while promoting equity, inclusion, and accessibility in service delivery; informing eligibility, recruitment, selection, enrollment and attendance (ERSEA) processes to prioritize the enrollment of those most in need of services; and identify strengths and resources in the community a program can leverage in service delivery.

We propose to revise paragraph (b)(2) so that it contains mostly existing standards redesignated from current paragraph (b)(1) and continues to focus on what data a program is required to collect, but with a few revisions. We propose to revise (b)(2)(i) to be the stem of the requirement to collect relevant data on eligible children and expectant mothers. Additionally, we revise this clause to no longer specifically require counts of eligible children and expectant mothers including counts by their geographic location, race, ethnicity, and languages spoken for enumerated items that follow. This has been moved to a new item as described in the following paragraph. Upon moving it, it has been broadened in the stem to ''relevant demographic and other data about'' eligible children and expectant mothers. This change allows programs to make strategic decisions on what relevant demographic and other data to collect on eligible populations to meet the intended outcomes of their community assessment. Also, it challenges programs to consider what demographic and relevant data to collect beyond counts of eligible populations by geographic location, race, ethnicity, and languages spoken.

We propose to add ''Children living in poverty'' as the first enumerated item to follow the revised clause in paragraph (b)(2) to promote clarity. Programs were already required to include data on children living in poverty in their community assessments since these children are considered ''eligible infants, toddlers, and preschool age children,'' but adding it to the list makes this more explicit. We propose to redesignate A, B and C from previous paragraph (b)(1) to follow the newly added item (A) in paragraph (b)(2). A new (E) is added to revised paragraph (b)(2) which includes the language from the current introductory clause in (b)(1)(i) which reads ''Geographic location, race, ethnicity and languages they speak.'' This specific language is pulled out to become (b)(2)(i)(E) to continue to highlight the importance of understanding these elements related to the diversity of populations most in need of services, which in turn can help promote equity, inclusion, and accessibility in service delivery as noted in the proposed new (b)(1)(ii).

We do not propose any changes to the rest of the required list of factors programs must consider in redesignated § 1302.11(b)(2)(ii)–(vi). The only revisions to the list are the addition of the phrases ''such as transportation needs'' in § 1302.11(b)(ii) as an economic factor impacting well-being and ''especially transportation resources'' in § 1302.11(b)(2)(v) to require programs to consider what resources are available in the community to address the needs of eligible children and families. The rationale for proposing to include transportation explicitly in the requirements for relevant data in the community assessment is because transportation remains a significant barrier for many of the hardest to serve families and impedes Head Start's mission. Access or lack of access to transportation plays a role in determining which families enroll in and attend Head Start programs. ACF wants to ensure transportation needs and resources are part of the data that informs a program's design and service delivery. A more extensive discussion of transportation is included in the *Transportation and Other Barriers to Enrollment and Attendance* section of this preamble.

We propose to add a new paragraph (b)(3), which requires programs to have a strategic approach to determine what data to collect prior to conducting the community assessment and how to use the data acquired after conducting the community assessment in order to achieve the intended outcomes outlined in the newly proposed (b)(1). This proposed requirement helps address the concern that some programs use overly exhaustive approaches or using unnecessarily complex analytical techniques to assess their communities. This requirement intends to align with best practices and promote overall effectiveness of the community assessment to drive programmatic decision making.

We also propose adding a new paragraph (b)(4) to require programs to identify certain data that would be unreasonably burdensome and costly to collect and consider using publicly or locally available data as a proxy instead. This proposed requirement addresses the cost and complexity some programs report in accessing certain data. For example, a program may determine it is unreasonable to collect data on the exact counts of children under the age of 6 experiencing homelessness due to the general difficulties and costliness in collecting accurate counts of populations experiencing homelessness.[176] Although these counts may be helpful, the proposed requirement encourages this program to consider other available data that can be used as a proxy to meet the intended outcomes of the community assessment including how to prioritize the enrollment of populations experiencing homelessness in their community, in what areas of their community are they located, and what community strengths and resources can be leveraged to promote the delivery of program services to these populations. It is feasible to meet these intended outcomes without exact counts of children under the age of 6 experiencing homelessness using other available data such as location of homeless shelters, enrollment rates of children experiencing homelessness in schools, and through discussions with local community-based organizations that provide services to populations experiencing homelessness. Furthermore, programs may be able to leverage existing data collected in community health assessments conducted by local health departments[177] and non-profit hospitals[178] to support their own community assessments.

We propose to redesignate paragraph (b)(2) to become (b)(5) and revise it to describe the purpose and goals of the annual review and update of the community assessment. There is a concern that the current annual update standard effectively requires a comprehensive update each year of the community assessment. The proposed requirement in redesignated and revised (b)(5) allows the program to determine where updates are needed based on areas where significant shifts in their community may have occurred that may impact their program design and service delivery, while also establishing that the annual update must consider how it can inform and support other relevant management and program improvement efforts as required in § 1302 Subpart J. These revisions to the annual update are intended to ensure programs are strategic in their approach to the annual

[176] *https://www.ncbi.nlm.nih.gov/books/NBK218229/#:~:text=Counting%20the%20homeless%20population%20is,of%20homelessness%20for%20many%20individuals.*

[177] *https://www.naccho.org/programs/public-health-infrastructure/performance-improvement/community-health-assessment*; *https://phaboard.org/accreditation-recognition/reaccreditation/.*

[178] *https://www.irs.gov/charities-non-profits/community-health-needs-assessment-for-charitable-hospital-organizations-section-501r3.*

update, which in turn can promote the effectiveness and usefulness of the update. Finally, we propose to redesignate paragraph (b)(3) to become (b)(6) without revisions to the regulatory text.

Conducting the community assessment is a complex process and we want to understand whether these proposed revisions to § 1302.11(b) will help address underlying challenges with the community assessment and whether they may cause any unintended consequences. Therefore, we are seeking public comment on the current development, utilization, and challenges of the community assessment as well as perceived impact of the changes proposed in this NPRM. ACF also seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities. We appreciate input that is specific and actionable. We also request public comment on whether any of the proposed revisions to the community assessment described in this NPRM will reduce program operational costs related to the community assessment.

Adjustment for Excessive Housing Costs for Eligibility Determination (§ 1302.12)

Head Start is intended to promote the school readiness of children living in low-income households.[179] However, many programs have expressed concern that Head Start eligibility criteria does not account for high cost of living in some areas across the country. Many families earn just above poverty wages, but more than 30 percent of their income goes to housing costs. In 2015, the Congressional Budget Office estimated that about 14 million households are eligible for housing assistance since they paid more than 30 percent of their income on housing, with some households paying more than 50 percent of their income on rent.[180] Children whose families earn near-poverty level wages and who live in areas with a high-cost of living have fewer family resources remaining after paying for shelter costs, compared to families in lower-cost of living areas.

High housing cost burdens have increased for low- and moderate-income renting households since the 1960s.[181] Affordable housing costs have long been defined as costs that total 30 percent or less of a family's total gross income. The 30 percent threshold is an income standard that has been incorporated into laws for Federal housing assistance programs since the early 1980s. It has been a norm for defining housing affordability and is used by the U.S. Department of Housing and Urban Development (HUD) as a rent limit in the HOME Investment Partnerships Program for low-income rental units.[182]

Other means-tested programs that aim to serve those experiencing poverty, like SNAP, use an income adjustment to account for excessive housing costs.[183] Adjusting income for housing expenses is an effective way to provide additional flexibility for families who are making above or near poverty wages, but face high housing costs, and would be eligible for Head Start if those disproportionally high housing costs were taken into account when determining eligibility.

Therefore, we propose to revise § 1302.12(i)(1) by adding a new (i) and (ii) to allow a program to adjust a family's income to account for excessive housing costs, when determining eligibility. We propose to redesignate current § 1302.12(i)(1)(i) as clause (iii) and subsequent clauses are renumbered accordingly. Additionally, we propose to add a definition of ''housing expenses'' to § 1305.2.

Specifically, § 1302.12(i)(1)(i) is a new stem to introduce the calculation of income and it states, ''The program must calculate total gross income using applicable sources of income.'' In a subsequent section of this NPRM, we described proposed clarifications to the definition of ''income'' in § 1305.2. Proposed new clause, § 1302.12(i)(1)(ii) introduces the adjustment for housing expenses and states that a program may make an adjustment to a family's gross income calculation for the purposes of determining eligibility in order to account for excessive housing expenses. A program must use available bills, bank statements, and other relevant documentation provided by the family to calculate total annual housing expenses with appropriate multipliers. There are two additional subclauses (A) and (B) that describe how programs should adjust income to account for housing expenses. Specifically, (A) states that programs should determine if a family spends more than 30 percent of their total gross income on housing expenses, and (B) states that, if applicable, programs may reduce the total gross income by the amount spent in housing expenses above the 30 percent threshold to calculate the adjusted gross income for determining income eligibility.

In addition, a new term for *housing expenses* in § 1305.2 is proposed which means the total annual applicable expenses spent by the family on rent or mortgage payments, homeowner's or renter's insurance, utilities, interest, and taxes on the home. Utilities includes electricity, gas, water, sewer, and trash.

To illustrate how income deductions would be calculated under these new proposed regulations, we describe the following example. If a family's annual gross income is $10,000 and they spend $5,000 on housing, their housing cost is 50 percent of their total gross income. Therefore, the percent of the family's income spent on housing is 20 percent higher than the 30 percent threshold, and the family's total gross income can be adjusted down by an amount equal to 20 percent of annual gross income. This results in a $2,000 reduction. Therefore, instead of a total gross income of $10,000 that the program must consider for eligibility purposes, this family's total gross income would be $8,000 after application of proposed § 1302.12(i)(1)(ii). ACF recognizes that programs do not need to calculate housing expenses for all families since many will still qualify for Head Start services based on income alone, or due to some other qualifying factor, including participation in SNAP or TANF. Therefore, the proposed regulatory language in (i)(1)(ii) indicates that a program ''may'' use available documents to calculate housing expenses.

We propose to add the definition of ''housing expenses'' to provide clarity about what can be considered in the calculation of total housing costs including what utility costs can be taken into account. In considering what utilities to include in the definition, ACF used HUD regulatory guidance for utility allowances as a resource.[184] The

[179] See the Head Start Act: *https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/HS_Act_2007.pdf.*

[180] Congressional Budget Office. (2015, September). *Federal Housing Assistance for Low-income Households. https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50782-lowincomehousing-onecolumn.pdf.*

[181] *https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-081417.html.*

[182] Measuring Housing Affordability: Assessing the 30 Percent of Income Standard. *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Herbert_Hermann_McCue_measuring_housing_affordability.pdf.*

[183] Center on Budget and Policy Priorities. (2023, January). *A Quick Guide to SNAP Eligibility and Benefits. https://www.cbpp.org/sites/default/files/11-18-08fa.pdf.*

[184] Utility Allowances. U.S. Department of Housing and Urban Development. *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/allowances#:~:text=The%20utilities%20for%20which%20allowances,as%20well%20as%20garbage%20collection.*

HUD definition of utility allowances includes electricity, natural gas, propane, fuel oil, wood or coal, and water and sewage service, as well as garbage collection. Programs can use bills and expenses from one month to calculate the average expenses that a family has throughout the year. Further, programs should only be using bills for which families have paid for out of pocket. For example, housing vouchers, rental assistance, support from the Low Income Energy Assistance Program (LIHEAP), or other types of financial assistance should not be included in calculations of housing expenses.

Programs should continue using their current methods of verifying eligibility based on tax forms, pay stubs, or other proof of income. These proposed regulatory changes would allow programs to also use bills, lease agreements, mortgage statements, and other documentation that shows housing and utility expenses.

By including this income deduction calculation in eligibility determination for Head Start, ACF expects many programs to utilize this deduction calculation for families seeking eligibility. However, programs must adhere to their recruitment and selection criteria to ensure they prioritize enrollment for those who may benefit most from Head Start services. Specifically, all Head Start programs must continue to use their selection criteria to prioritize the enrollment of the families most in need of services as required in 45 CFR 1302.13. The sole purpose of this proposed rule is to allow programs to consider income deductions for the purposes of determining Head Start eligibility.

ACF would like to invite comment on including a limit to the total amount in housing costs that can be deducted from a family's income. ACF is not concerned with high income families being enrolled in Head Start since families still must be income-eligible after accounting for high housing costs, and programs should continue prioritizing highest need families based on their selection criteria. However, we invite comments on whether there should be a dollar limit or percentage limit to how much is allowed to be deducted from income to account for housing costs. ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Migrant and Seasonal Head Start Eligibility (§ 1302.12)

Section 1302.12(f) describes the eligibility requirements for enrollment in MSHS programs. Currently, to be eligible for MSHS, a family must demonstrate that their income comes primarily from agricultural labor which has been interpreted and implemented to mean a family's income must be more than 50 percent from agricultural work. This presents an additional challenge to MSHS programs in finding eligible families. It has become increasingly less common for agricultural work to be the primary source of an entire family's income as agricultural work has become less available or stable due to unpredicted weather events and due to higher pay in other industries. These changes impacting the agriculture industry have resulted in barriers to enrolling farmworker families in need of program services.

To address this barrier, we propose to add language to § 1302.12(f) to add the policy that ''one family member is primarily engaged in agricultural employment'' rather than ''family's income comes primarily from agricultural work.'' A family must still meet an eligibility criterion for Head Start services under 45 CFR 1302.12(c) (*i.e.,* living at or below the 100 percent poverty guideline, experiencing homelessness, receiving public assistance, or in foster care). However, due to challenges migrant families face in relocating often to seek agricultural work, MSHS programs must prioritize migrant families for selection as required in § 1302.14(a)(2).

Additionally, § 1302.12(j) outlines the requirements related to the period of time a child remains eligible for Head Start and when program staff must verify the family's eligibility again before continuing services. In paragraph (2), specifically, the HSPPS notes that children who are enrolled in a program receiving funds under the authority of section 645A of the Act, which refers to the Early Head Start program, remain eligible while they participate in the program.

The current standards do not specify eligibility duration related to the unique programs operated by MSHS. Current practice is that MSHS programs verify eligibility every two years. However, MSHS programs serve children from birth to school age and nearly half of MSHS enrollment consists of children under the age of three. Furthermore, many MSHS programs also receive Early Head Start funding.

The existing requirement creates an inequity because infants and toddlers served in Early Head Start programs can receive services for the duration of the program, meaning until they turn three and age out of the program, whereas the MSHS family is no longer considered eligible for the program after two years. Therefore, the young children of agricultural workers are not provided the same potential duration of services as infants and toddlers served by Early Head Start.

To address this inequity and extend the same opportunity to MSHS infants and toddlers that is available to infants and toddlers served through an Early Head Start grant, we propose to add a paragraph to address eligibility duration for infants and toddlers participating in MSHS programs. Specifically, we propose to add a new paragraph (5) to existing § 1302.12(j). The new language clarifies that MSHS programs can serve infants and toddlers for 3 years, consistent with the requirement in § 1302.12(j)(2) that children participating in Early Head Start are eligible for the duration of the program. We believe this new language will correct this inequity and promote continuity for families served by MSHS and reduce paperwork for families and programs.

Transportation & Other Barriers to Enrollment and Attendance (§ 1302.14; § 1302.16)

Sections 1302.14 and 1302.16 address the requirements for the selection process and attendance, two key components of ERSEA. Section 1302.14 outlines the current requirements for programs' selection of eligible children. It currently specifies that programs must annually develop selection criteria, based on community needs identified in the community needs assessment, for how they will prioritize the selection of eligible children. It also requires that a program ensure at least 10 percent of its total funded enrollment is filled by children eligible for services under IDEA unless a wavier is granted throughout the program year once the assessments are completed. Finally, it requires that programs maintain a waitlist. Section 1302.16 outlines the requirements of programs in the area of attendance. It articulates what programs must do to support regular attendance, to manage systematic program attendance issues, and to support attendance for children who are homeless.

Through the course of implementing these provisions and discussions with constituents, ACF believes strongly that these requirements do not adequately reflect the importance of acknowledging barriers to enrollment and attendance,

which is a critical part of selecting children for participation and ensuring they can attend regularly. There are many barriers that may impede enrollment or attendance in Head Start programs even after a child is selected. These barriers include, but are not limited to, transportation access, affordability and reliability challenges, particularly for individuals with disabilities; demands of family life (*e.g.,* balancing work and school schedules, housing instability, caring for sick or disabled relatives); or hours and schedules that are not flexible enough to meet a family's needs (*e.g.,* additional child care needed to enable attendance at programs that do not operate for a full work day).

We expand here on the example of transportation because of concerns that transportation to local programs remains a significant barrier for many of the hardest to serve families and impedes Head Start's mission. The decision to cut or reduce transportation services is often part of a difficult budget decision-making process to free up funds for other rising program costs. For instance, in an analysis of Head Start Preschool and Early Head Start grants across the county, the average cost of a bus is about $90,000, or roughly $2,500 per seat. This cost excludes the cost of bus drivers and ongoing bus maintenance. As a result, Head Start programs nationally provide transportation to only 20 percent of enrolled children, more than 100,000 fewer children as compared to a decade ago.[185]

According to the Bureau of Transportation Statistics, about 70 percent of low-income families with children ages 5 to 14 take a school bus to school.[186] The Consumer Expenditure Survey (CE), administered by the Bureau of Labor Statistics (BLS), found that households spent an average of $9,826 on transportation in 2020—the second largest household expenditure category after housing. And low-income households spend a much higher proportion of their income on transportation expenses than non-low-income households. In 2021, the average household with an income equal to or below $24,127 spent nearly a third of their income, 26.9 percent, on transportation. To compare, households with an income equal to or above $129,534 spent an average of 10.4 percent on transportation.[187] Having better clarity on this particular barrier and providing more targeted transportation assistance, if possible, allows these households to use their limited funds for other essential expenses.

Research has shown that transportation is linked to economic mobility and documented links between poor public transit access and higher rates of unemployment.[188] Additionally, accessing public transportation can be challenging and less reliable for low-income communities, the same communities in which many eligible families are located and are most in need of reliable public transportation.[189] We propose new language in § 1302.14 and § 1302.16 to require programs to consider barriers to enrollment and attendance. In § 1302.14 *Selection,* we propose to add a new paragraph (d) to require programs to use data from the selection process to understand why children selected for the program do not enroll or attend. We specifically name transportation in the proposed language as one such barrier. We propose to amend paragraph § 1302.16 *Attendance* by adding § 1302.16(a)(2)(v) to require programs to examine barriers to regular attendance. Given the centrality of transportation as a barrier to reaching children and families, we again name access to transportation in the proposed language, and require programs to, if possible, provide or facilitate transportation if needed. Note that we also explicitly include transportation in § 1302.11 on the community assessment to ensure that transportation needs and resources are part of the community wide strategic planning and needs assessment.

The objective of the proposed changes to these requirements is to ensure programs are using their data to understand the factors that impede Head Start enrollment and participation in their service area, and ultimately, equip programs with more data to inform continuous improvement of service delivery as described in § 1302.102(c). We propose to specifically require programs to consider transportation as a barrier to enrollment and attendance because of its significance in determining which children can enroll and participate in Head Start. In tandem with proposed revisions in § 1302.11(b) and § 1302.16(a)(2), strengthening our HSPPS to increase transportation services to more children will help to provide more educational opportunity while also addressing these inequities. We believe these proposed changes will promote the thoughtful use of the community assessment, selection process, and attendance process to inform responsive program design, and ultimately, ensure children who would benefit most from Head Start services are identified, enrolled, and supported in attendance. With the additional data required in these sections, Head Start programs can better meet their current families' needs and help to make services more accessible to future families. ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Serving Children With Disabilities (§ 1302.14)

Section 1302.14 outlines the requirements for selecting eligible children for participation in the Head Start program. Paragraph (b) of this section requires a program to ensure at least 10 percent of its total funded enrollment is filled by children eligible for services under the Individuals with Disabilities Education Act (IDEA) unless the responsible HHS official grants a waiver.

Though § 1302.14(b) reads ''funded enrollment,'' section 640(d)(1) in the Act states the percentage of children with disabilities (eligible under IDEA) is based on ''the number of children actually enrolled,'' rather than the funded enrollment. ACF has received feedback from various interested groups that this error has caused confusion among programs because the Act and the HSPPS state different requirements.

To address this inconsistency, we propose to change ''funded'' to ''actual'' in 1304(b)(1) so the HSPPS are consistent with the Act. This change will clarify the requirement and address the confusion caused by the discrepancy.

We encourage all Head Start programs to recruit and enroll as many children who are eligible for IDEA services as possible. The 10 percent requirement is

[185] Source: Head Start 2010–2020 PIR.

[186] Ibid. Note: Uniform data on the population of children under five taking a bus or other ECE transportation services is not collected by the Bureau of Transportation Statistics.

[187] U.S. Department of Transportation, Bureau of Transportation Statistics, *Transportation Economic Trends,* available at *www.bts.gov/product/transportation-economic-trends.*

[188] Chetty, R., Hendren, N., Kline, P., & Saez, E. (2014). Where is the land of opportunity? The geography of intergenerational mobility in the United States. *The Quarterly Journal of Economics, 129*(4), 1553–1623.; Kaufman, S., Moss, M.L., Tyndall, J., & Hernandez, J. (2014). Mobility, economic opportunity and New York City neighborhoods. *NYU Wagner Research Paper,* (2598566).

[189] Stern, A., Stacy, C., Blagg, K., Su, Y., Noble, E., Rainer, M., & Ezike, R. (2020). Access to Opportunity through Equitable Transportation. Available at: *https://www.urban.org/research/publication/access-opportunity-through-equitable-transportation.*

meant to be a floor rather than a ceiling for serving children who would benefit from the program. ACF strongly encourages Head Start programs to maximize services to children with disabilities who will benefit from the program's strong focus on inclusive early childhood settings. Early intervention and access to available services through Head Start provides children with disabilities with supports that can positively impact their education and well-being over the long term. Through partnerships with State and local education agencies, Head Start plays an important role in identifying children with disabilities or developmental delays and referring families to services and follow-up care.

Head Start programs are required to design and implement a coordinated approach that ensures the full and effective participation of all children with disabilities and their families (45 CFR 1302.101(b)(3)). The long-standing collaboration between ACF and the U.S. Department of Education Office of Special Education Programs (OSEP) seeks to ensure young children with disabilities are served in high-quality early childhood programs, including Head Start programs. This requires ongoing partnerships between the Individuals with Disabilities Education Act (IDEA) Part C early intervention and Part B, section 619 preschool special education programs and Head Start programs.

During the return to in-person services in 2022, OHS and OSEP issued a joint letter [190] to reiterate important policies and practices related to providing services to young children with disabilities. The joint letter (1) reminds programs of requirements under Part B of the IDEA to provide special education and related services to eligible preschool-aged children with disabilities, (2) promotes collaboration at the State and local program level to meet requirements, and (3) provides resources to assist Head Start and other providers in creating effective memoranda of understanding for coordinating the implementation of high-quality programs for all children.

Ratios in Center-Based Early Head Start Programs (§ 1302.21)

This section establishes requirements for staff-child ratios and group sizes for center-based Head Start Preschool, Early Head Start, and Migrant or Seasonal Head Start classes. The current standards at § 1302.21(b)(1) require staff-child ratios and group size maximums to be determined by the age of the majority of children in a class. The age of majority of the children is generally determined at the start of the year but may be adjusted during the program year if needed. Where State or local licensing requirements are more stringent, then staff-child ratios and group size specifications must meet the stricter requirements.

Further, § 1302.21(b)(2) requires that classrooms that serve children under 36 months old must have two teachers with no more than eight children, or three teachers with no more than nine children. The current standards in paragraph (b)(2) also emphasize that each teacher serving children under 36 months must be assigned consistent, primary responsibility for no more than four children to promote continuity of care for individual children. A program must also minimize teacher changes throughout a child's enrollment and consider mixed age group classes to support continuity of care.

However, we propose to add a new standard that encourages programs to use a lower teacher-child ratio of no more than three children to every teacher for classrooms where the majority of children are infants under 12 months. Specifically, we propose to add the following new sentence after the second sentence in § 1302.21(b)(2), that states that programs are encouraged to establish a lower teacher to child ratio for the youngest children they serve, provided that it does not jeopardize continuity of care for children. As the premier ECE provider in the United States, Head Start sets an example for early childhood programs nationwide. Head Start programs are known for providing high-quality early childhood services. Furthermore, a warm, responsive relationship between an infant and caregiver is a crucial foundation for infants to learn and develop. A lower teacher-child ratio can support the establishment of this strong, secure relationship and allow for more individualized attention between the infant and teacher. A lower ratio of one teacher to three infants also aligns with the National Resource Center for Health and Safety in Child Care and Early Education recommendations for center-based programs with classrooms where the majority of children are under 12 months old.[191] Further, research indicates that, generally, lower teacher-child ratios in ECE classrooms relate to higher classroom quality and stronger child outcomes.[192] This proposed revision takes into consideration research findings and recommendations and encourages programs to consider reducing teacher-child ratios for their youngest classrooms, to provide the highest quality care and learning opportunities for infants enrolled in Head Start.

We further clarify that this proposed change is an encouragement for programs and should not be interpreted as a new ratio requirement for classrooms very young children. We recognize that a lower teacher-child ratio will likely be challenging for some programs to implement during the current staffing shortage. We further emphasize that the requirements in § 1302.21(b)(2) on promoting continuity of care by minimizing teacher changes throughout a child's enrollment in Head Start, and doing so through mixed age classrooms, is still of top priority. ACF understands that implementing different ratio requirements for different age groups in Early Head Start can be challenging and antithetical to continuity of care (*e.g.,* if children need to switch classrooms after their first birthday). This can be challenging when programs are also trying to ensure that teacher-child relationships are stable across a child's early years in a program. ACF intentionally prioritizes continuity of care especially for younger children and programs should continue to create policies that support strong teacher-child relationships. ACF invites public comment on possible costs associated with lowering ratios for the youngest children served, for programs that may choose to do so.

We would also like to understand the potential implications of lowering ratio requirements for the youngest classrooms, particularly for children 12 months old or younger. According to 2020 State licensing standards, there are three states that have a ratio of one

[190] Letter can be found at this link: *https://eclkc.ohs.acf.hhs.gov/local-early-childhood-partnerships/press-release/encouraging-idea-collaboration-between-state-agencies-local-agencies-head-start-programs.*

[191] American Academy of Pediatrics, American Public Health Association, & National Resource Center for Health and Safety in Child Care and Early Education. (2020). Caring for Our Children (CFOC) online standards database. National Resource Center for Health and Safety in Child Care and Early Education. *https://nrckids.org/CFOC.*

[192] Bowne, J.B., Magnuson, K.A., Schindler, H.S., Duncan, G.J., & Yoshikawa, H. (2017). A Meta-Analysis of Class Sizes and Ratios in Early Childhood Education Programs: Are Thresholds of Quality Associated With Greater Impacts on Cognitive, Achievement, and Socioemotional Outcomes? *Educational Evaluation and Policy Analysis, 39*(3), 407–428. *https://doi.org/10.3102/0162373716689489;* Xue, Y., Atkins-Burnett, S., Vogel, C., and Cannon, J. (2022). *Teacher–Child Relationship Quality and Beyond: Unpacking Quality in Early Head Start Classrooms in 2018.* OPRE Report 2022–122. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

teacher to three children for infants 12 months old or younger.[193] ACF is interested in applying this reduced teacher-child ratio requirement for classrooms where the majority of children are 12 months old or younger. We invite public comment on such a possible change, as well as possible costs associated with such a change.

Center-Based Service Duration for Early Head Start (§ 1302.21)

Section 1302.21(c)(1)(i) requires Early Head Start center-based programs to provide 1,380 annual hours of planned class operations for all enrolled children. It has been a long-standing expectation of ACF that EHS programs provide continuous services, which we have interpreted as full-day, full-year services. Therefore, while not explicitly stated, the intent of the Early Head Start 1,380 hours requirement for center-based service duration is for programs to provide full-day, full-year services. Research on full-day and full-year programs suggests children in poverty benefit from longer exposure to high-quality early learning programs than what is provided by part-day and/or part-year programs.[194]

However, the standard does not explicitly require a minimum number of weeks per year over which the 1,380 hours should be provided. Therefore, we propose to add a phrase to § 1302.21(c)(1)(i) to clarify that the 1,380 hours of planned class operations for children in EHS should occur across a minimum of 46 weeks per year. Based on our experiences implementing the current requirement, we believe most programs are already operating year-round; however, a small number of programs may be operating less than a full year and we would like to promote full-year services for infants and toddlers in EHS. However, we are also aware that specifying the requirement as at least 46 weeks per year may have unintended consequences, such as programs moving to part-day services or reducing their weeks per year to 46 to align with a new requirement. Therefore, we request comment on these possible unintended consequences as well as on other ways we can ensure EHS services are full-day and full-year as intended, while still providing flexibility to programs in developing their program schedules. ACF also seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities. Finally, we also invite comment on how such a change would impact service delivery and any challenges that may be associated with meeting a revised standard, including the implementation timeframe.

Center-Based Service Duration for Head Start Preschool (§ 1302.21; § 1302.24)

Section 1302.21 establishes the program structure standards that are required to operate Head Start Preschool, Early Head Start, American Indian and Alaska Native, and Migrant or Seasonal Head Start center-based program options. This includes standards for ratios and group size, service duration, and licensing and square footage. In this section, we propose seven technical corrections to existing provisions in § 1302.21(c)(1) through (6) to remove outdated text and improve readability of these standards. We do not propose any change in policy to these existing standards.

First, in § 1302.21, we propose to revise paragraph (c)(1)(i) by removing the phrase ''By August 1, 2018.'' That date has already passed and does not add any substance to that paragraph.

Second, we propose to revise paragraph (c)(2)(i) by adding the phrase ''Service Duration for at Least 45 Percent'' as a subheading. We remove the phrase ''Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (c)(2)(v)'' and replace it with ''A program must provide 1,020 annual hours of planned class operation over the course of at least eight months per year for at least 45 percent of its Head Start Preschool center-based funded enrollment,'' which reflects the current requirement. We also propose to amend paragraph (c)(2)(i) by removing the language that details the minimum number of hours per day and days per year a program must operate for any child (''a program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day'') and moving that language into a new paragraph (ii). We also propose to add the phrase ''Service Duration for Remaining Slots'' as a subheading to the new paragraph (ii).

Third, we propose to redesignate existing paragraph (c)(2)(ii) as paragraph (c)(2)(iii) and revise the redesignated paragraph (c)(2)(iii) by adding the phrase ''Double session'' as a subheading. In redesignated paragraph (c)(2)(iii) we also propose to remove the language ''Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (c)(2)(v) of this section, if a program operates'' and instead begin that paragraph with ''Double session variation must,'' to improve readability. In addition, we propose to remove the term ''aides'' from the third sentence of redesignated paragraph (c)(2)(iii) and replace that term with ''assistants.'' We propose the term ''assistant'' as this term more accurately reflects this staff role in Head Start Preschool classrooms and aligns with other requirements for preschool classrooms to have at least a teacher and teacher assistant in each classroom.

Fourth, we propose to remove existing paragraphs (c)(2)(iii) and (iv), which describe the two-part phase in for the outdated 100-percent service duration requirement. The 100-percent service duration requirement[195] was effectively eliminated when the Secretary lowered the Head Start center-based service duration requirement from 100 percent to 45 percent in a **Federal Register** notice, 85 FR 5332.

Fifth, we propose to redesignate existing paragraph (c)(2)(v) as new paragraph (iv). We propose to revise the redesignated paragraph (iv) by adding ''Special Provision for Alignment with Local Education Agency'' as a subheading to make this section easier for the public to read. We also propose to update cross-references to existing paragraphs by replacing the phrase ''paragraphs (c)(2)(iii) and (iv)'' with ''paragraph (c)(2)(i)'' to align with the proposed revisions described previously.

Sixth, we propose to eliminate paragraph (c)(3) since the provisions in this paragraph are outdated; the Secretary already exercised authority to lower the Head Start center-based service duration requirements and the dates have passed.[196]

[193] *https://childcareta.acf.hhs.gov/sites/default/files/public/center_licensing_trends_brief_2020_final.pdf.*

[194] Yoshikawa, H., Weiland, C., Brooks-Gunn, J., Burchinal, M.R., Espinosa, L.M., Gormley, W.T., Ludwig, J., Magnuson, K.A., Phillips, D., & Zaslow, M.J. (2013). *Investing in Our Future: The Evidence Base on Preschool Education.* Policy Brief. Foundation for Child Development.; Wasik, B.A., & Snell, E.K. (2019). Synthesis of preschool dosage: How quantity, quality, and content impact child outcomes. In A.J. Reynolds & J.A. Temple (Eds.), *Sustaining early childhood learning gains: Program, school, and family influences* (pp. 31–51). Cambridge University Press.

[195] This requirement would have required all Head Start programs to provide at least 1,020 annual hours of service for all (100 percent) of their center-based preschool slots.

[196] *https://www.federalregister.gov/documents/2020/01/30/2020-00635/secretarial-determination-to-lower-head-start-center-based-service-duration-requirements; https://www.federalregister.gov/*

Lastly, we propose to remove paragraph (c)(4) because the November 7, 2016, date mentioned in that standard has passed and the standard is no longer applicable. We propose to redesignate existing paragraph (c)(5) ''Exemption for Migrant or Seasonal Head Start programs'' as the new paragraph (3) and redesignate existing paragraph (6) ''Calendar planning'' as the new paragraph (4).

Section 1302.24 describes locally designed program option variations, including waiver requirements. We propose to make updates in this section to align with the proposed updates for center-based service duration in § 1302.21. Specifically, in paragraph (c)(1) we propose to remove the reference to ''(c)(2)(iii) and (iv)'' and replace it with ''(c)(2)(i).'' In paragraph (c)(3) we propose to remove the reference to ''(c)(2)(iii) or (iv)'' and update it with ''(c)(2)(i).'' In paragraph (c)(3) we also propose to remove the reference to ''(c)(2)(i)'' and update it with ''(c)(2)(ii).'' Finally, at the end of the sentence in paragraph (c)(3), we propose to remove the reference to ''(c)(2)(ii)'' and update it with ''(c)(2)(iii).'' In paragraph (c)(5) we propose to remove the reference to ''(c)(2)(iii) and (iv)'' and replace it with ''(c)(2)(i).'' Finally, we propose to remove paragraph (d) ''Transition from previously approved program options'' because the November 7, 2016, date mentioned in that standard has passed and the standard is no longer applicable.

Ratios in Family Child Care Settings (§ 1302.23)

Family child care is an important component of a robust state mixed delivery early care and education system that supports flexibility and choice for parents. Families may prefer a home-based option for various reasons, including meeting their cultural or scheduling needs, offering a smaller family like setting, or enabling younger and older siblings to be served in the same location. For families who opt for a home-based program for their children, Head Start services provided within a family child care option can help to ensure services are high-quality and include supports such as professional development and technical assistance to home-based providers. Section 1302.23(b) lays out the provider to child ratio and group size requirements for programs that operate a family child care option with enrolled Head Start children. Paragraph (b) requires a grant recipient that operates this option to maintain a group size of no more than six children in mixed age groupings with no more than two of those children under age 24 months with one family child care provider. And a provider may have no more than four children in a grouping of children under age 36 months with no more than two of those children under age 18 months.

We believe that these standards for the family child care option demonstrate a commitment to quality; however, we recognize that the wording of the existing standards has led to confusion among grant recipients, particularly in understanding the difference between the standards for groupings that include older children and those that serve only infants and toddlers. It was our intent during the initial drafting of the standards that an acceptable grouping of infants and toddlers should be smaller than a mixed age grouping of children that includes preschool or older children. However, we received feedback from the field that the current standards are unclear.

Based on this input, we propose to make clarifying revisions to the current standard. Specifically, § 1302.23(b)(2) as written establishes the maximum group size of six children with no more than two children under the age of 24 months of age with one provider but does not reference the age makeup allowances for the rest of the group. The language at § 1302.23(b)(3) references an acceptable ratio and group size of one provider with up to four children younger than age 36 months with no more than two of the four children under 18 months of age. Taken together the two standards § 1302.23(b)(2) and (3) are not sufficiently distinct. Therefore, we propose to amend § 1302.23(b)(2) to clarify that the maximum group size with one provider and six children, with no more than two under 24 months of age, refers to a mixed age grouping that includes preschool children (*e.g.,* children over the age of 36 months). Specifically, we propose to add the header ''Mixed Age with Preschoolers'' to paragraph § 1302.23(b)(2) and add the following language to the first sentence after the phrase ''family child care provider'': ''with a mixed-age group of children that includes children over 36 months of age.'' Similarly, we propose to clarify § 1302.23(b)(3) by adding the header ''Infants and Toddlers Only'', and deleting ''One family child care provider may care for up to four children younger than 36 months of age with a maximum group size of four children'' and replacing it with ''When there is one family child care provider with a group of children that are all under 36 months of age, the maximum group size is four children.''

ACF believes these fixes will not alter the substance of the regulation but will provide much needed clarity to Head Start programs with a family child care option while acknowledging the importance of maintaining ratios and group sizes that facilitate high-quality interactions and support children's safety and development.

In making these clarifying revisions, we noted that the standards in § 1302.23(b)(2) allow for an increased group size when both a family child care provider and an assistant provider are present. However, the role of ''family child care assistant provider'' is not defined and is not addressed in the staff qualifications and competency requirements outlined in § 1302.91(e)(5) for child and family services staff.

We believe that all adults who provide direct services to children regardless of setting should have appropriate, training, knowledge, and experience that will enable them to support children's development through effective teaching practices and nurturing adult-child interactions. As a model for high quality early childhood supports and services, Head Start programs must ensure that providers have the necessary skills to ensure quality programming that will lead to positive outcomes for children and families. Therefore, we propose to amend the second sentence of § 1302.23(b)(2) by removing the phrase ''When there is a provider and an assistant provider'' and replacing it with the phrase ''When there are two providers.'' We believe this change will help ensure that large mixed-age groups (of up to twelve children) in family child care settings are supported by qualified family child care providers. In addition, for consistency and clarity, we propose to strike the phrase ''and assistant providers'' from the final sentence of § 1302.23(b)(4) to emphasize that programs must ensure any staff who may have primary responsibility for children have the necessary training and experience to ensure quality services are not interrupted.

We invite comment on the potential impact of removing these two references to ''assistant provider'' in the family child care option and the requirement that all family child care providers meet the qualification requirements. We seek comment specifically from family child care programs that currently employ assistant providers. ACF also seeks public comment from the special populations served by Head Start,

documents/2018/01/19/2018-00897/secretarial-determination-to-lower-head-start-center-based-service-duration-requirement.

including AIAN and MSHS programs and communities.

Safety Practices (§ 1302.47)

Section 1302.47 establishes expectations for Head Start programs to ensure basic health and safety measures are taken for the protection of all children. Here, we propose changes to § 1302.47(b), which requires programs to implement a system of management, training, and oversight to ensure safe practices in a list of areas in order to ensure child safety. In the years of implementing these requirements since the 2016 revision of the HSPPS, grant recipients and other interested parties have raised questions about these requirements and to whom they apply. Given how critical child safety is in Head Start programs, it is imperative that we are as clear as possible and that our requirements reflect current best practices and terminology. In this section, we propose to clarify expected safety practices related to child health, mental health, and safety incidents. More specifically, the proposed requirements specify that any adult working in Head Start is responsible for safety practices and more precisely define safety practices by including the existing minimum Federal standard for abuse and neglect, clarifying that children should be supervised at all times, and drawing attention to the relevant paragraphs of the Standards of Conduct.

We propose to remove from § 1302.47(b)(5) the phrase ''staff and consultants'' and replace it with ''staff, consultants, contractors, and volunteers.'' This revision is intended to clarify that Head Start contractors and volunteers, in addition to staff and consultants, should be aware of and are expected to follow safety practices. The proposed change will clarify that all individuals working in Head Start must be aware of and responsible for child safety practices.

Section 1302.47(b)(5)(i) describes the safety practice of reporting suspected or known child abuse and neglect. We propose to add the phrase ''as defined by the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note).'' The proposed change will clarify the definition of child abuse and neglect that is aligned with existing Federal statute, CAPTA, which states that ''the term 'child abuse and neglect' means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation (including sexual abuse as determined under section 111), or an act or failure to act which presents an imminent risk of serious harm.'' The Federal definition is a minimum standard and programs must also comply with State, local, and Tribal laws, which may have additional stipulations related to defining child abuse and neglect and other requirements for mandated reporting. If there are discrepancies between Federal and State, local, and Tribal laws, programs should comply with the more stringent regulation.

In § 1302.47(b)(5)(iii), appropriate supervision of children is described as a safety practice. We propose to remove the phrase ''indoor and outdoor.'' This proposed change clarifies that appropriate supervision of children is expected at all times and aligns with Caring for Our Children guidelines.[197]

Next, in § 1302.47(b)(5)(v), the standards of conduct in § 1302.90(c) are referenced as a safety practice. We propose to add the designation ''(ii)'' to the citation to clarify that § 1302.47(b)(5)(v) references the specific standards of conduct that are related to staff behavior that could be reasonably suspected to negatively impact children, which are described in § 1302.90(c)(ii). This addition would also reduce redundancies since supervision and reporting of suspected or known child abuse and neglect are listed as stand-alone safety practices as well as embedded in subparagraphs of the broader standards of conduct. Further discussion of child safety, which is of the utmost importance to Head Start programs, can be found in the sections of this preamble titled *Standards of Conduct* and *Staff Training to Support Child Safety.*

Lastly, we propose to add a clause to the end of § 1302.47(b)(1)(ii), ''including lead consistent with § 1302.48'', to align with the changes discussed in the following section of this preamble.

ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Preventing and Addressing Lead Exposure (§ 1302.48)

In this section, we propose new requirements on preventing and addressing lead exposure through water and lead-based paint in Head Start facilities. Protecting children from exposure to lead is important to promote lifelong good health, as there is no safe level of lead, especially for the ages of children Head Start serves. Even low levels of lead in blood have been shown to affect learning, ability to pay attention, and academic achievement.[198] These requirements together will help prevent and address lead exposure for children in settings used to provide Head Start program services by ensuring programs test for and remediate lead hazards on a regular basis. Specifically, we propose to add a new section § 1302.48 to Subpart D Health and Mental Health Program Services that includes four paragraphs: paragraph (a) contains proposed requirements to prevent and address lead exposure through water, paragraph (b) contains proposed requirements to prevent and address lead exposure through paint, paragraph (c) contains proposed requirements to ensure public notification of test results and remediation actions as an outcome of paragraphs (a) and (b), and paragraph (d) contains a requirement that, should applicable State or local laws or regulations have more stringent requirements for lead testing or remediation, programs should comply with the more stringent requirements.

Lead in Water

Paragraph (a) of § 1302.48 introduces new proposed requirements to address lead in water from water fixtures used for human consumption (see proposed definition for *water fixtures used for human consumption* in § 1305.2). These include requirements on sampling and testing for lead in water from such fixtures, the frequency of testing, detectable lead level that requires remediation action, and requirements on point-of-use (POU) devices for reducing lead levels. This regulation is supportive of ongoing efforts across the Federal Government that is addressing lead in water in early care and education settings.[199]

As specified in paragraph (a), these requirements only apply to Head Start facilities constructed before 2014 and where lead service lines, plumbing, or fixtures may still exist. The year 2014 is selected as it aligns with the effective

[197] Caring for our Children. (2022). *Chapter 2.2 Supervision and Discipline.* National Resource Center for Health and Safety in Child Care and Early Education, Department of Health and Human Services. Available online at *https://nrckids.org/cfoc/database/2.2.0.1.*

[198] See *https://www.cdc.gov/nceh/lead/prevention/health-effects.htm#:~:text=Lead%20exposure%20occurs%20when%20a,Slowed%20growth%20and%20development.*

[199] Dear Colleague Letter on Funding to Test for and Address Lead in Water in Early Care and Education Settings. (2023). *https://www.acf.hhs.gov/ecd/policy-guidance/dear-colleague-letter-funding-test-and-address-lead-water-early-care-and.*

date of the Reduction of Lead in Drinking Water Act which established that any pipe, pipe fitting, plumbing fitting, and fixture installed, manufactured, or imported for new construction is lead-free at a weighted lead content average of less than or equal to 0.25 percent [200] We also recognize some older facilities have all lead service lines, plumbing, and fixtures removed and replaced, and we do not intend to impose unnecessary burden on testing for lead in water for programs operating in such facilities. If a program operates in a facility constructed prior to 2014 and can demonstrate that all of these lead-based facility features no longer exist, then requirements in paragraph (a) do not apply.

We propose in paragraph (a)(1) that programs sample and test water for lead from such fixtures on an annual basis. This requirement is to ensure programs test for lead in water to catch and address lead contamination on a regular schedule. A sample test is a snapshot of the lead level taken at the time it was collected. Lead levels at a fixture or within a building have been shown to vary over time. Factors that contribute to this variability include water chemistry, hydraulics, lead plumbing sources, and water consumption patterns.[201] Regularly scheduled testing and routine maintenance are essential to reducing lead in drinking water.

Annual monitoring of lead levels in water can provide information to the program on potential changes in the lead levels, the ongoing effectiveness of remediation or treatment efforts, and detection of lead levels that need to be addressed. We recognize that how frequently programs should test is dependent on a variety of factors including the age of the facility and plumbing, characteristics of plumbing infrastructure, water quality, prior lead testing and results, and remediation efforts implemented.[202] To provide flexibility to test less frequently when reasonable, we propose that a program may choose to only test water from a proportion of fixtures each year with governing body approval. If a program decides to use this flexibility, they must still ensure that all water fixtures used for human consumption are tested at least once every 5 years. For example, a program will meet this requirement if they decide to test one-fifth and a different set of their water fixtures each year since this would result in all water fixtures being tested within a 5-year timeframe. This flexibility is proposed to allow programs to weigh the variety of factors discussed earlier when determining the frequency of testing, while still ensuring all water fixtures are tested within at least a 5-year window.

We propose in paragraph (a)(2) that programs sample and test water fixtures used for human consumption following remediation actions to address detectable lead or following a change to the water profile (see proposed definition for *change in water profile* in § 1305.2). This proposed requirement adds an additional layer of protection to the requirements in the prior clause on frequency of testing to ensure testing occurs on water fixtures following an event that has a high likelihood of impacting the lead level in water used for human consumption. Additionally, testing following remediation actions to address detectable lead supports programs in meeting the other proposed requirements in paragraphs (a)(5) through (7).

We propose in paragraph (a)(3) that all samples must be collected by an individual who is adequately trained to collect samples for lead testing. We recognize that most programs will need to train an individual to collect samples. Programs should leverage available trainings and technical assistance, including resources developed by the EPA 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities—A Training, Testing and Taking Action Approach (3Ts) program, to ensure the individual is adequately trained to collect samples. A trained individual should understand how to conduct a 2-step sampling procedure (*i.e.,* a first draw sample and flush sample), ensure water remained stationary in the plumbing system of the facility for at least 8 but no more than 18 hours [203] prior to collecting the sample when appropriate, ensure samples are collected at correct volumes, and how to have the sample delivered to a laboratory.

We propose in paragraph (a)(4) that all samples are analyzed for lead by a laboratory that is certified by EPA or the State, territory, or Tribe for testing lead in drinking water. The resource, ''Contact Information for Certification Programs and Certified Laboratories for Drinking Water'' is readily available for programs to find EPA certified laboratories by State: *https://www.epa.gov/dwlabcert/contact-information-certification-programs-and-certified-laboratories-drinking-water.* This requirement ensures the entity conducting the lead level test is following EPA Federal standards on testing to promote consistent and high-quality results.

We propose in clause paragraphs (a)(5) and (6) that, together, programs are required to restrict access to water fixtures used for human consumption within 24 hours of determining the water has a lead sample result at or above 5 parts per billion, provide notice in a timely manner to parents of children who may have consumed the water, and access to these water fixtures is not allowed for human consumption until lead sample results indicate the water fixture is below 5 parts per billion following remediation actions. Ways to restrict access can include closing the water supply valve to the fixture or placing a sign that the water cannot be consumed. The 24-hour timeframe for restricting access was selected to provide a reasonable timeframe for the program to take action to restrict access and prevent any exposure to the identified source of lead. The 5 parts per billion level requiring remediation action was selected for several reasons, including that it aligns with the Food and Drug Administration (FDA) lead level limit [204] in bottled water and the NSF/ANSI 53 certification for POU devices.[205] While not explicitly stated in the regulatory text, OHS encourages programs to notify parents of children who may have consumed water within 24 hours if feasible, and not later than 10 business days.

We understand that there is no safe lead level for children and therefore we propose in paragraph (a)(7) a requirement that programs still consider taking remediation actions to address water fixtures used for human consumption with detectable lead below 5 parts per billion with the goal to lower the lead level as low as practicable. This proposed requirement promotes a shared health goal of no detectable lead in water, while recognizing that there

[200] See *https://www.epa.gov/sdwa/use-lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water.*

[201] Triantafyllidou S, Burkhardt J, Tully J, et al. Variability and sampling of lead (Pb) in drinking water: Assessing potential human exposure depends on the sampling protocol. Environ Int. 2021;146:106259. *https://doi.org/10.1016/j.envint.2020.106259.*

[202] See *https://www.cdc.gov/nceh/lead/prevention/sources/water.htm.*

[203] U.S. EPA 3Ts Program—Lead Sample Collection field Guide for Schools and Child Care Facilities; EPA 816–F–22–009, July 2022 at *https://www.epa.gov/system/files/documents/2022-07/US%20EPA%203Ts%20Lead%20Sample%20Collection%20Field%20Guide%20For%20Schools%20and%20Child%20Care%20Facilities_508.pdf.*

[204] See *https://www.fda.gov/consumers/consumer-updates/bottled-water-everywhere-keeping-it-safe.*

[205] See *https://www.nsf.org/news/drinking-water-treatment-units-stricter-requirements-lead-reduction-cert.*

may be challenges achieving such a goal.

As part of these proposed requirements, programs have the flexibility in determining which remediation steps to take when addressing elevated lead levels in water, including the use of POU [206] devices on water fixtures, replacement of plumbing materials including pipes and fixtures, or a combination of these and other approaches. Programs can determine which remediation actions [207] to take based on various factors including the options and resources available to them.

We propose in paragraph (a)(8) that when programs decide to use POU devices to address lead in water, that programs must appropriately use and maintain POU devices that reduce lead levels as tested and certified by a third party according to NSF/ANSI Standards for lead reduction. Programs should follow manufacturer instructions to appropriately maintain POU devices, which would include replacing filters in a timely manner and ensuring replacement filters also comply with NSF/ANSI standards. Currently, NSF/ANSI Standard 53 for Drinking Water Treatment Units is the nationally recognized standard for evaluating and certifying POU devices for the reduction of lead in drinking water.[208]

EPA implements safe drinking water in partnership with states, Tribes, and water system operators. EPA regulates public water systems (PWSs) in accordance with the Safe Drinking Water Act. EPA's Lead and Copper Rule establishes requirements for PWSs to address lead in drinking water. Most Head Start facilities are served by PWSs. Even when water entering a facility meets all Federal and State public health standards for lead, internal building plumbing and fixtures may contribute to sources of lead in drinking water, particularly those installed prior to the EPA 1986 Lead Ban.[209] Another significant source of lead localized to the Head Start building can occur through the main service line if it is a lead service line. This is why it is important that programs test for and remediate detectable lead in water within Head Start facilities. We recognize that a few programs may be using privately owned water systems. If this privately owned water system has at least 15 service connections or serves at least 25 people per day for 60 days of the year, it is considered a public water system and would be regulated by EPA.[210] If the facility does not meet this definition, then the system is not regulated by EPA. The owners of these systems are responsible for the safety of their water, and it is important Head Start programs in these rare circumstances take steps to understand the overall quality of their water and to also remediate exceedances of the 5 parts per billion lead level.

In implementing these requirements, ACF encourages programs to refer to the EPA voluntary program: 3Ts available at *https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water.* The purpose of this program is to assist states, schools, and child care facilities with implementing their own testing and remediation programs, developing a plan, conducting outreach, and taking action to address elevated levels of lead. Further, programs may be able to utilize funding available from the Bipartisan Infrastructure Act to cover some of the costs associated with lead testing and remediation.

Lead in Paint

Paragraph (b) introduces new requirements on preventing and addressing lead exposure in paint, with its associated exposures from lead in dust and lead in soil, in facilities constructed before 1978 and in facilities where lead-based paint may exist, including appropriate abatement actions, and the frequency of re-assessing lead-based paint hazards following abatement.

We propose to limit requirements associated with paragraph (b) to programs operating in facilities constructed prior to 1978 and where lead-based paint may still exist. The year 1978 is when the Federal Government banned the consumer use of lead-based paint, and this requirement targets the risk associated with facilities constructed prior to this date.[211] However, we recognize that there are facilities constructed prior to 1978 where lead paint has been completely removed (*e.g.,* through major renovation or studs-out remodel), or that were constructed without lead paint. If a program operates in a facility constructed prior to 1978 and is able to demonstrate that lead-based paint no longer exists, then requirements in paragraph (b) do not apply. We propose in paragraph (b)(1) that programs work with a risk assessor who is certified by either the EPA or by a State, territory, or Tribe with an EPA-authorized lead-based paint certification program to inspect for lead-based paint and assess for lead-based paint hazards. Of rooms in Head Start facilities undergoing an evaluation, we assume approximately 43.8% would be identified as potentially having a lead-based paint hazard requiring abatement.[212] We understand this value may be an overestimate since it is based on a study covering pre-1978 child care centers, and we request public comment on whether there is a better assumption that can be applied regarding the percent of rooms in Head Start facilities that may require abatement.

We propose in paragraphs (b)(2) and (3) that programs immediately restrict access to identified lead hazards until abatement actions are completed by a lead abatement contractor certified by the EPA or State, territory, or Tribal agency (see proposed definition for *abatement* in section 1305.2). These provisions aim to minimize risk of lead exposure for children, while maintaining flexibility for programs to determine appropriate lead abatement strategies that best meet local program needs and available resources, in consultation with certified lead abatement experts and contractors.

Lead is naturally present in soil, but we recognize that deposits from leaded gasoline, exterior lead-based paint, and industrial sources may contribute to concerning levels of lead in the soil surrounding a program, especially in urban areas with historic use of leaded paint or leaded gasoline, and in rural areas where there was heavy pesticide use for agriculture.[213] Lead does not biodegrade over time and remains in soil for a long time.[214] Although there are no proposed requirements to explicitly address lead in soil, the requirements in this paragraph may

[206] U.S. EPA Consumer Tool for Identifying POU Drinking Water Filters Certified to Reduce Lead at *https://www.epa.gov/water-research/consumer-tool-identifying-pou-drinking-water-filters-certified-reduce-lead.*

[207] For details specific to remediation, go to EPA 3Ts guidance at *https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water#mod6.*

[208] See *https://www.nsf.org/consumer-resources/articles/standards-water-treatment-systems.*

[209] Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water—Final ''Lead Free'' Rule at *https://www.epa.gov/sdwa/use-lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water.*

[210] See *https://www.epa.gov/dwreginfo/information-about-public-water-systems.*

[211] See *https://www.cdc.gov/nceh/lead/prevention/sources/paint.htm.*

[212] *https://www.hud.gov/sites/dfiles/HH/documents/AHHS_II_Lead_Findings_Report_Final_29oct21.pdf.*

[213] See *https://www.epa.gov/sites/default/files/2020-10/documents/lead-in-soil-aug2020.pdf.*

[214] Urban-Soil Pedogenesis Drives Contrasting Legacies of Lead from Paint and Gasoline in City Soil,'' Anna M. Wade, Daniel D. Richter, Christopher B. Craft, Nancy Y. Bao, Paul R. Heine, Mary C. Osteen and Kevin G. Tan; May 21, 2021, Environmental Science & Technology. DOI: *https://doi.org/10.1021/acs.est.1c00546.*

result in hazardous levels of lead in soil to be identified and addressed through inspections of lead-paint hazards and associated abatement efforts. Additionally, we encourage programs to consider the risk of lead in their soil, and take any steps needed to ensure any bare soil where children play is non-toxic.

We propose in paragraph (b)(4) that following the conclusion of any abatement actions, those facilities that have lead-based paint or lead-based paint hazards as determined by the initial inspection and risk assessment, would have a certified risk assessor reassess for lead-based paint hazards at least once every 2 years unless two reassessments conducted two years apart identify no lead-based paint hazards, indicating the quality of the ongoing lead-based paint maintenance of the facility. Two years is selected as it aligns with the Lead Safe Housing Rule recommendation for reevaluation of HUD-assisted properties (24 CFR 35.1355(b)(4)). Further, allowing a program to no longer reassess every 2 years when two reassessments conducted 2 years apart identify no lead-based paint hazards is intended to remove unnecessary burden of reassessments when the risk of lead-based paint hazards to re-emerge is low. However, programs are encouraged to visually monitor for potential deterioration of lead abatement measures on an ongoing basis, including looking for any peeling or chipping paint. We request comment on whether we should require regular visual inspections.

We request comment on whether the dust-lead hazards should be specified or referenced to EPA established clearance levels and whether the reassessment process proposed following abatements of lead-based paint hazards should be modified such that a reassessment is required if the EPA promulgates more stringent abatement requirements that take effect following the two reassessments envisioned by this proposal's regulatory text.

Notification

In paragraph (c), we propose requirements that programs provide notification of lead testing results and remediation actions to parents, caregivers, and staff to promote transparency and raise awareness. Additionally, notification of results and actions to parents, caregivers, and program staff can help build community trust and engagement and demonstrate a commitment to children's health and safety. While the proposed provision does not provide a specific timeframe for notification, EPA's 3T's program encourages beginning communication [215] before testing begins and ongoing throughout the testing process. We encourage programs to consider leveraging existing methods of communication already established throughout the program year. For example, if there is suspicion that a child may have been exposed to lead, programs should encourage parents to talk to their child's healthcare provider about completing the appropriate blood lead tests. We also encourage programs to consider a notification schedule and approach that is appropriate for their community. Notifications must be translated and interpreted for families with limited English proficiency, in alignment with § 1302.90(d)(1) and consistent with Title VI of the Civil Rights Act of 1964. Programs also must provide effective communication to individuals with disabilities about lead testing results and remediation actions, consistent with the Rehabilitation Act of 1973.

Conflicting Requirements

As with many areas of the HSPPS, there may be situations in which the HSPPS differ somewhat from State or local laws or regulations. In those cases, it is standard practice that programs adhere to the more stringent requirement. In paragraph (d) we propose a requirement that specifically states that programs should comply with the more stringent requirement, should State or local laws or regulations differ from the requirements described in paragraphs (a) through (c). We note that we interpret this standard to apply to each specific aspect of these requirements. For example, if a State requires licensed programs to have a more stringent action level when lead is identified in water but a less stringent standard for testing frequency, a program should use the more stringent action level required by the State and the more stringent testing frequency required by the proposed standard in HSPPS.

We welcome all public comments on the proposed requirements to prevent and address lead exposure through water and paint (including associated dust and soil exposures). We are specifically interested in public comment on the issues programs have experienced with previously addressing harmful lead exposure in water or paint, whether the proposed flexibilities are helpful or if additional flexibility is needed, and the action level requiring remediation for lead in water, as well as any areas that are particularly unclear.

We did not propose any requirements to specifically target lead in soil, since we believe this will be captured through proposed requirements on lead-paint inspections and through programs determining when it is necessary to test lead in their soil (*e.g.,* programs testing bare soil accessible for children to play in since they are in an urban area near older buildings that currently or previously contained lead paint). We were concerned that lead in soil testing and remediation requirements would cause too much undue burden and by not including them, we aim to ensure programs have flexibility in their approaches to determining and addressing lead in soil hazards.

Finally, ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Family Service Worker Family Assignments (§ 1302.52)

Since its inception in 1965, Head Start has been a leader in anti-poverty, two generation early childhood programming focused on school readiness, family well-being, and family and community engagement. Section 1302.52 outlines the requirements for family partnership services, the foundational and central process by which staff engage with each family of enrolled children. This section describes the required components of the family partnership process: the intake and family assessment procedures to identify family strengths and needs related to family engagement outcomes; what must occur as part of individualizing family partnership services; and the need to consider existing plans and community resources to support families in order to ensure that families can take full advantage of services for which they are eligible and promote coordination across service providers. This section also describes what is needed to individualize family partnership services and how staff must collaborate with families to identify needs, interests, and individualized family goals. Head Start staff who partner with families play a critical role in helping families achieve their goals and aspirations for themselves and for their children.

Family well-being is one of the greatest predictors of school

[215] US EPA 3Ts communication templates can be found at *https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water#mod1.*

readiness.[216] Many families of all backgrounds in the U.S. face various challenges, such as unemployment, poverty, high housing costs, food insecurity, community violence, limited education, and poor health. Each of these alone can cause family stress and negatively impact family well-being. When combined, these negative effects on family well-being and child outcomes can be even greater.[217] The Head Start workforce that supports families provides many of the comprehensive services that reflect Head Start's focus not only on the health and development of young children, but the well-being and leadership of their families.

When Head Start staff that provide family services have high family assignments, which are sometimes referred to as caseloads, they may feel overwhelmed and experience burnout, which in turn negatively impacts the quality of family services. Data from Head Start's technical assistance trainings shows that high family assignments and being asked to take on additional responsibilities beyond the job description are often accompanied by expressions of job frustration and dissatisfaction among staff who work directly with families. Further, OHS regional offices have reported that when cost savings are needed, programs will first look to personnel budgets by decreasing family service positions. This can lead to larger family assignments for remaining staff and less stability in staffing for family support services in Head Start, which may decrease the quality of services. Many family services staff with higher family assignments share with OHS that they have too many family assignments to meaningfully and consistently address supports for family wellbeing, parenting, and family engagement around children's early learning and education. Though there is not much literature on the family engagement specialist caseload experience, research on home visiting demonstrates that stressors in caseload management relate to diminished engagement with participants that could negatively impact the participant experience.[218]

Research from related fields shows that high family assignments compromise workers' ability to provide effective services to families. High family assignments also exacerbate already high levels of staff burnout and turnover.[219] Further, program leaders describe family assignments as a major challenge. In a 2019 National TTA study of Head Start programs, Family and Community Services Managers, who oversee family services staff, cited their top two program challenges as (1) workload/family assignments being too large for staff and (2) families faced so many challenges that staff were not able to support families as well as they would like.[220]

ACF has sought various ways to support the family services workforce. For example, ACF established the National Center on Parent, Family and Community Engagement (NC PFCE) in 2010. The NC PFCE developed research-based resources, including a set of family services competencies which articulate best practices in family assignment limits. NC PFCE also conducted hundreds of trainings to assist Head Start programs with implementing these best practices. Additionally, to improve workloads for staff working directly with families, in the 2016 revisions to the HSPPS, ACF added § 1302.52(c)(4) ''Assign staff and resources based on the urgency and intensity of identified family needs and goals.'' Despite these efforts, we have seen little change to family assignment ratios across time, as evidenced by our own Head Start Program Information Report (PIR) data.

According to the PIR for program year 2021, 50 percent of programs had one staff partnering with 40 or more families. Of those programs, 21 percent had family assignments of one staff to 40–50 families; 16 percent had family assignments of one staff to 50–60 families; seven percent had family assignments of one staff to 60–75 families; and six percent of programs had family assignments of one staff to 75–200+ families. Based on these data, there is a wide range of family assignments across our programs, therefore we feel it is necessary to establish a standardized family assignment requirement.

Section 648A(c)(2) of the Act provides ACF with the authority to review and if necessary, revise, requirements related to family assignments, as suggested by best practice, to improve the quality and effectiveness of staff providing services to families. We believe the research in this field coupled with our own PIR data and feedback we received from programs indicates a strong need for clearer standards for management of family assignments. We propose an additional provision in § 1302.52 Family Partnership Services, (d) *Approaches to Family Services.*

We propose to add this section to address the long-standing problem of overly high family assignments for many family services staff. We recommend this change to promote consistent, reasonable family assignments for staff who work directly with families in the family partnership process. We believe this change will improve the quality of support that family support services provide and improve their own well-being as well.

For these reasons, we propose to insert a new section (d) *Approaches to family services* to 1302.52 Family Partnerships. In (d)(1), we propose minor edits for alignment with the new section and to emphasize the family-centered nature of the process by including language that specifies both family interests and family needs. Next,

[216] Chazan-Cohen, R., Raikes, H., Brooks-Gunn, J., Ayoub, C., Pan, B.A., Kisker, E.E., . . . Fuligni, A.S. (2009). Low-income children's school readiness: Parent contributions over the first five years. Early Education & Development, 20(6), 958–977. Duncan G.J. & Magnuson, K.A., (2005). Can family socioeconomic resources account for racial and ethnic test score gaps? The Future of Children, 15(1). Retrieved from *http://www.jstor.org/stable/1602661* Fantuzzo, J., Leboeuf, W., Brumley, B., & Perlman, S. (2013). A population-based inquiry of homeless episode characteristics and early educational well-being. Children and Youth Services Review, 35(6), 966–972. Mistry, R.S., Benner, A.D., Biesanz, J.C., Clark, S.L., & Howes, C. (2010). Family and social risk, and parental investments during the early childhood years as predictors of low-income children's school readiness outcomes. Early Childhood Research Quarterly, 25(4), 432–449. Ryu, J.H., & Bartfeld, J.S. (2012). Household food insecurity during childhood and subsequent health status: The Early Childhood Longitudinal Study—Kindergarten Cohort. American Journal of Public Health, 102(11), e50–e55.

[217] Brooks-Gunn, J., Duncan, G.J., & Maritato, N. (1999). Poor families, poor outcomes: The well-being of children and youth. In G.J. Duncan & J. BrooksGunn (Eds.), Consequences of growing up poor (pp. 1–17). New York: Russell Sage Foundation; Vernon-Feagans, L., & Cox, M. (2012). I. Poverty, rurality, parenting, and risk: An introduction. Monographs of the Society for Research in Child Development, 78(5), 1–23.

[218] Alitz, P., Geary, S., Birriel, P., Sayi, T., Ramakrishnan, R., Balogun, O., . . . Marshall, J. (2018). Work-Related Stressors Among Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Home Visitors: A Qualitative Study. *Maternal and Child Health Journal, 22,* 62–69.

[219] Boston Children's Hospital. (2012). Family connections. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start. Retrieved from *https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/introduction-to-family-connections.pdf;* Child Welfare Information Gateway. (2016, July). Caseload and workload management. Retrieved from *https://www.childwelfare.gov/pubPDFs/case_work_management.pdf;* Howes, C., Phillips, D.A., & Whitebook, M. (1992). Thresholds of Quality: Implications for the Social Development of Children in Center-Based Child Care. Child Development, 63(2), 449–460.; Social Work Policy Institute. (2010, January). High caseloads: How do they impact delivery of health and human services? Retrieved from *http://www.socialworkpolicy.org/wp-content/uploads/2010/02/r2p-cw-caseload-swpi-1-10.pdf.*

[220] Administration for Children and Families, U.S. Department of Health and Human Services. (2022). *Survey of Head Start Grantees on Training and Technical Assistance.* [Unpublished data analyses].

we propose a new (d)(2) that requires programs to ensure the planned number of families assigned to work with individual family services staff is no greater than 40, unless a program can demonstrate higher family assignments provide high quality family and community engagement services and maintain reasonable staff workload as described in (d)(3).

There are no research-based assignment ratios to adopt from other fields that are aligned enough in job description with this unique early childhood workforce. Therefore, we propose a maximum of 40 families per family services staff member, considering the large variation in families' interests, needs, goals and the variation of families' engagement with their programs.

We include an implementation date of two years from an estimated date of a final rule because we recognize the degree of change required by programs will vary depending on programs' current family assignment systems and procedures. This proposal could mean substantial change for some programs and little to no change for others. In fact, 2021 PIR data reveals that approximately 50 percent of programs have staff family assignments that are 40 families or less. It should be noted that the proposed maximum is intended for programs with higher than 40 assignments per staff to lower their family assignment ratios. The proposed maximum is not meant to bring programs with lower assignment numbers up to 40. Programs who have already established best practices at lower staff: family ratios are encouraged to continue these responsive family services.

In addition to the proposed family assignment maximum, we propose to include language in a new (d)(3) to allow for program designs that best meet the needs of the program and community, based on community and family assessment data. We include this language recognizing that programs may need the flexibility to design family and community engagement services in ways that are preventative and responsive to emerging family and community needs.

Finally, we also propose a requirement for effective and meaningful employee engagement practices that include opportunities for staff to discuss and address workload-related issues. We propose this language to promote such practices to address the negative impact of family services workload factors, such as the stress of unofficial job duties and lack of clear job expectations can have on staff wellness, job satisfaction, and providing high-quality services.

ACF seeks input from the public on the benefits and challenges of implementing a family assignment cap of 40 families per family service worker, using a phased in approach over a period of 3 years from the publication date of a final rule. To better understand programs' specific experiences, ACF is also seeking programs' feedback on the benefits and challenges of implementing family assignments between 30 and 40 per individual staff and the same for implementing family assignments between 40 and 50 per individual staff. Finally, ACF also seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Participation in Quality Rating and Improvement Systems (§ 1302.53)

Section 1302.53 establishes the requirements for Head Start programs to participate in State quality rating and improvement systems (QRIS). With the exception of American Indian and Alaska Native programs, each Head Start program must currently participate in its State QRIS if three conditions are met—its State or local QRIS accepts Head Start monitoring data to document quality indicators included in the State's tiered system; participation would not impact a program's ability to comply with the HSPPS; and the program has not provided ACF with a compelling reason not to comply with this requirement.

A QRIS is a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs within a State or locality. These accountability systems unify standards, evaluate and report quality to the public, and provide supports and incentives for improvement.[221] These systems award quality ratings to programs that meet a set of criteria as defined by the QRIS. Criteria Head Start programs must meet to enter the QRIS and maintain participation vary greatly by State.

QRIS can be an important mechanism for coordinating and aligning various programs into a broader statewide system of early care and education. Participation by Head Start and other programs into a QRIS can provide continuity, alignment of standards and a common means by which families can understand and make decisions among which program options are best for their family. As states continue to move in the direction of more streamlined, coordinated early care and education systems that are easier for families to navigate, Head Start participation in QRIS can serve to ensure that Head Start programs are part of these statewide coordination efforts and that eligible families consider Head Start alongside other options in the QRIS.

Currently, 41 states have statewide QRIS (Florida has three local QRIS). Of these 41 states with statewide QRIS, 27 states require at least some types of programs (generally licensed programs and programs receiving child care subsidy funds) to participate in the system. In 15 States, Head Start programs are required by the State to participate in the QRIS, either as a function of licensing or receiving subsidy funds, or through reciprocity agreements or alternate pathways that bring Head Start programs into the system automatically.[222] Fourteen states have fully voluntary systems in which programs are not required to participate regardless of licensure status or receipt of child care subsidies.

State QRIS are structured very differently across states, and participation may be required for all types or some types of programs or may be voluntary for all programs. In states with voluntary QRIS, participation rates average 40 percent for licensed center-based programs. While at least some Head Start programs participate in QRIS even within voluntary systems, states may require a broad range of documentation for entry into the QRIS, as well as additional assessments, monitoring visits, or reviews. These requirements, along with periodic revisions to aspects of a State's QRIS[223] may impact a Head Start program's ability to participate in the system.

We recognize the importance of quality improvements and encourage Head Start programs to continue their

[221] Bipartisan Policy Center. (2018). *Creating an integrated efficient early care and education system to support children and families: A state-by-state analysis. https://bipartisanpolicy.org/report/ece-administration-state-by-state/;* Warner-Richter M. (2016, February 9). *Promoting quality improvement in early care and education.* Child Trends. *https://www.childtrends.org/promoting-quality-improvement-in-early-care-and-education;* Tout, K., Friese, S., Starr, R. & Hirilall, A. (2018). Understanding and Measuring Program Engagement in Quality Rating and Improvement Systems. OPRE Research Brief #2018–84. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[222] Build Initiative & Child Trends. (2021). A Catalog and Comparison of Quality Improvement Systems [Data System]. Retrieved from *https://qualitycompendium.org/* on September 29, 2022.

[223] Ibid.

participation in these important quality improvement efforts. Many Head Start grant recipients receive funds from Head Start as well as other early childhood funding streams. Participating in QRIS and other State and local quality initiatives can help drive quality across a program. At the same time, ACF wants to ensure that QRIS requirements are not duplicative of Head Start requirements, thus requiring a program to undergo the same process multiple times. Nor does ACF want Head Start programs to draw resources away from other early childhood programs that do not have access to resources provided through ACF and are in greater need of support from State and local resources that support quality. Based on findings from an analysis of current State QRIS systems and their evolutions, and input from ACF regional staff and Head Start Collaboration Offices who support coordination among Head Start programs and State systems, we propose to revise the language at § 1302.53(b)(2) to clarify that Head Start programs should participate in QRIS to the extent practicable if the State system has strategies in place to support their participation. These proposed changes recognize that QRIS systems differ significantly across states and continue to evolve rapidly. Substantive changes to QRIS may require additional burden on programs in the form of revised processes and potentially additional or different documentation, as well as possible duplication of monitoring and assessment processes. These proposed changes are intended to allow Head Start programs to focus their resources on activities that are most likely to support quality services for children and families. For programs in states where the QRIS does not have strategies in place to support Head Start participation, does not accept existing documentation for participation, or that would in any way impact a program's ability to comply with the HSPPS, staff effort and program resources may be better directed at other activities. However, ACF notes that Head Start programs currently participating in their State QRIS are encouraged to continue to do so.

We propose further to eliminate the three conditions for participation in the State QRIS as written in the current standards at § 1302.53(b)(2)(i)–(iii), as we believe these conditions unnecessarily require the Head Start grant recipient to document individual circumstances that support or impede participation in the system. By eliminating these specific conditions and substituting language that emphasizes the State strategies for Head Start participation in general, we believe Head Start grant recipients, along with Head Start Collaboration Offices and OHS regional staff, can collectively encourage the evolution of State systems like QRIS to better receive Head Start programs.

In paragraph (b)(2), we propose to replace ''must'' with ''should'' in the overarching requirement. We propose to add ''to the extent practicable, if a State or local QRIS has a strategy to support Head Start participation without requiring programs to duplicate existing documentation from Office of Head Start oversight.'' We believe this change will clarify for programs that there is an expectation from ACF that they participate in the QRIS if the system has a strategy that will support Head Start participation. Strategies may include reciprocal agreements or alternate pathways, as well as mandatory requirements for Head Start programs to participate. Some Head Start programs may be required to participate if they receive other funds or are licensed as a child care program. The change further emphasizes that ACF does not expect programs to duplicate documentation efforts that are required for Head Start oversight purposes in order to participate in the QRIS. We also propose to delete paragraphs (b)(2)(i) through (iii) in this section in their entirety which delineate the current conditions for QRIS participation.

The current standards include the State's acceptance of Head Start monitoring data, which continues to be a barrier to participation in some states. We believe that eliminating these criteria will lessen the documentation required on individual circumstances for participating or not participating in a QRIS, but rather would help programs examine their State's QRIS as a State system and better understand Head Start's overall role in that broader system. ACF still strongly supports the central requirement that programs should participate in a QRIS to the extent practicable as this standard provides programs with an important lever for participating in a State's high-quality mixed delivery ECE system and in accessing State quality improvement efforts where participation pathways and strategies exist. Participation in the QRIS also serves as an important mechanism in some states to assist families in recognizing quality program options that can include Head Start programs. Head Start programs must maintain a high level of quality, and it is important that parents understand the services offered in Head Start.

Services to Enrolled Pregnant Women and People (§ 1302.80; § 1302.82)

Section 1302.80 describes the services programs must provide to enrolled pregnant women and people. It requires programs to: assess whether enrolled pregnant women and people have access to an ongoing source of health care and health insurance, and if not, to facilitate their access to such care and insurance; facilitate access to comprehensive services; and schedule a visit with each newborn and their mother or birthing parent within two weeks after the newborn's birth, to identify family needs and offer support (referred to as the ''newborn visit'').

Women and people receiving Head Start services face social determinants of health that may impact their prenatal and postpartum outcomes. Early postpartum intervention is key to preventing and addressing maternal health-related challenges.[224] Postpartum support and intervention can identify and address issues such as postpartum depression, intimate partner violence, and physical health issues that occur during pregnancy. The period after childbirth is critical to assess the child care, health, and mental health needs of mothers and families. In fact, over half of maternal deaths occur between 1 week and 1 year after birth, most of which are preventable.[225] Early Head Start programs are critical in addressing the maternal mortality crisis and other maternal-health related challenges as they are positioned to provide postpartum support by ensuring the required newborn visit provides intentional opportunities for collaboration, intervention, and support.

Paragraph (d) in this section focuses on the required newborn visit. We propose to revise paragraph (d) by adding a new sentence to the end of the paragraph that requires the newborn visit to include a discussion of postpartum mental and physical health, infant health, and support for basic needs. We believe this language will clarify for programs what areas—at a

[224] Firoz, T., McCaw-Binns, A., Filippi, V., Magee, L.A., Costa, M.L., Cecatti, J.G., Barreix, M., Adanu, R., Chou, D., & Say, L. (2018), A framework for healthcare interventions to address maternal morbidity. Int J Gynecol Obstet, 141: 61–68. *https://doi.org/10.1002/ijgo.12469.*

[225] Trost SL, Beauregard J, Njie F, et al. Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 US States, 2017–2019. Atlanta, GA: Centers for Disease Control and Prevention, US Department of Health and Human Services; 2022.; Petersen EE, Davis NL, Goodman D, et al. Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017. MMWR Morb Mortal Wkly Rep 2019;68:423–429. DOI: *http://dx.doi.org/10.15585/mmwr.mm6818e1.*

minimum—should be included as part of the newborn visit. This requirement is intended to reflect the minimum requirements for the newborn visit. Programs may choose to include other areas of assessment or support based on the needs of both parent and newborn. The proposed requirement is intended to clarify requirements and provide consistency in topics covered during the newborn visit.

Section 645A(a) of the Act authorizes funding for Early Head Start programs to provide services that encompass the full range of the family's needs, from pregnancy through a child's third birthday, to promote the child's development and move the parents toward self-sufficiency. Early Head Start programs are not required to enroll expectant families, but many choose to do so. If an Early Head Start program chooses to enroll pregnant women and people, they must identify the total number of pregnant women and people they anticipate serving each program year in the grant application, provide high-quality prenatal and postnatal education, and help them access comprehensive prenatal services.

However, currently, Early Head Start programs are not explicitly required in regulation to track and record interactions with pregnant women and people. Moreover, programs are not currently required to detail and record the services they provide enrolled pregnant women and people as well as the services received from community partners or providers. Although programs are not required to do so, generally, programs do track and record this information. However, there is significant variation in format and level of detail across programs, which often makes it difficult to verify actual enrollment numbers and challenging for OHS to understand the services provided to pregnant women and people.

Early Head Start programs with identified slots to serve pregnant women and people are responsible for creating a system of care that supports the well-being of mothers, parents, and newborns. This includes tracking and documenting services a pregnant woman or person receives, including those received via referrals to community partners, to the extent practical, in order to identify how to best be responsive to the needs of the enrolled pregnant woman and people. Information captured about individual services provided to pregnant women and people is essential because it can be used to validate the use of Federal funds to serve pregnant women and people and to inform ongoing conversations program staff have with a pregnant woman or person about their needs before and after the baby is born.[226]

As such, we also propose to amend § 1302.80 by adding a new paragraph (e). The goal of new paragraph (e) is to enhance program accountability by requiring programs to track and record information on service delivery for enrolled pregnant women and people. We believe this proposed standard will enhance program accountability by requiring programs to verify the number of pregnant women and people they serve along with details on the services received.

Head Start PIR data from FY 2022 [227] reveals that most pregnant parents that enroll in Early Head Start services do so during their second and third trimesters. Early prenatal care is key for optimal outcomes for pregnant women and newborns.[228] We believe all Head Start programs are in unique positions to support pregnant women and people, including staff working in programs, by identifying, understanding, and addressing barriers to healthy pregnancies. This begins by understanding the impact systemic racism has on the maternal health outcomes of women of color,[229]—particularly African American or Black and AIAN women—as many women of color and their children are served in Head Start programs.

According to the Office of Minority Health and Health Equity, pregnancy-related death impacts Black women at higher rates than White women.[230] Data from 2021 shows that the maternal mortality rate for non-Hispanic Black women was over twice the rate for non-Hispanic White women.[231] There are also disparities in maternal mortality for Native Hawaiian or Other Pacific Islander (NHOPI) and AIAN populations.[232] Inadequate access to quality health care, systemic racism, and disparities in social determinants of health may contribute to disparities in healthy pregnancy and birth outcomes for many pregnant women and people from racial and ethnic minority groups.[233]

Newborn babies are also impacted by systemic racism. Infant mortality data show that African American or Black, NHOPI, and AIAN babies are dying at higher rates in the U.S. than other racial or ethnic groups.[234] Head Start programs are positioned to address racial gaps in maternal mortality, morbidity, and infant deaths by customizing services for the pregnant women and people they serve based on the needs of their community.

To help programs better understand and address barriers a pregnant woman or person may have to a healthy pregnancy and childbirth, we further propose to amend § 1302.80 by adding a new paragraph (f). The new paragraph requires programs to identify and reduce barriers to healthy pregnancy outcomes for enrolled pregnant women and people based on the information and data collected on this population. The goal is also to help reduce racial inequities in maternal and infant morbidity [235] and mortality. This proposed paragraph states, ''The program must provide services that help reduce barriers to healthy maternal and birthing outcomes for each family, including services that address disparities across racial and ethnic groups, and use data on enrolled pregnant women to inform program services.'' We believe this new paragraph will ensure programs customize prenatal and postnatal services to help improve outcomes and contribute to the reduction of racial inequities in maternal and infant morbidity and mortality. Programs should use data and information collected from referrals and general case management to inform and individualize services. Documentation of services should include a summary of

[226] See ACF–IM–HS–22–02, Documenting Services to Enrolled Pregnant Women, *https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-22-02.*

[227] Source: Head Start 2022 PIR.

[228] Novoa, C. (2020). Ensuring Healthy Births Through Prenatal Support Innovations From Three Models. *https://www.americanprogress.org/article/ensuring-healthy-births-prenatal-support/.*

[229] Bornstein, E., Eliner, Y., Chervenak, F. A., & Grünebaum, A. (2020). Racial Disparity in Pregnancy Risks and Complications in the US: Temporal Changes during 2007–2018. *Journal of clinical medicine,* 9(5), 1414.

[230] Office of Minority Health & Health Equity (OMHHE). April 2022. *https://www.cdc.gov/healthequity/features/maternal-mortality/index.html.*

[231] Hoyert DL. Maternal mortality rates in the United States, 2021. NCHS Health E-Stats. 2023. DOI: *https://dx.doi.org/10.15620/cdc:1246.*

[232] U.S. Department of Health and Human Services, Centers of Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Reproductive Health. Pregnancy Mortality Surveillance System: Trends in pregnancy-related mortality ratio by race/ethnicity: 2017–2019. *https://www.cdc.gov/reproductive health/maternal-mortality/pregnancy-mortality-surveillance-system.htm.*

[233] Ibid.

[234] Ely DM, Driscoll AK. Infant mortality in the United States, 2019: Data from the period linked birth/infant death file. National Vital Statistics Reports; vol 70 no 14. Hyattsville, MD: National Center for Health Statistics. 2021. DOI: *https://dx.doi.org/10.15620/cdc:111053.*

[235] Maternal morbidity describes any short- or long-term health problems that result from being pregnant and giving birth. National Institute of Child Health and Human Development. (June 2021). *https://www.nichd.nih.gov/health/topics/maternal-morbidity-mortality.*

interactions with the pregnant woman or person through case notes, strengths and needs assessment, referrals and the results of the referrals to community partners, and information from the family partnership agreement and any relevant community partnership agreements. The program should examine this information and data for any barriers that prevent pregnant women and people from having healthy pregnancies and birth outcomes. Plans may include approaches developed with the Health Services Advisory Committee and community partners to help address or reduce identified barriers.

Next, we discuss proposed revisions to § 1302.82. In general, this section highlights that, as with all other families, enrolled pregnant women and people should receive the family partnership services described in § 1302.52 Family partnership services. However, § 1302.82 clarifies that these services should be explicitly directed toward their prenatal and postpartum care needs. This section also describes requirements to support the enrollment of the newborn into a program as appropriate.

Programs are not currently required to use a curriculum in the provision of services to pregnant women and people, nor are there any requirements for the type of curriculum if one is used. However, if a curriculum is used, it should be responsive to the needs of the population served. As such, programs opting to use a maternal health curriculum should consider the needs of the pregnant women and people in their program. If used, the curriculum should provide information that increases the knowledge of pregnant women or people and their support system. Those who attend maternal health courses with their partners are more likely to attend postpartum visits and had higher positive maternal health behaviors.[236] It is imperative that any selected curriculum be responsive to the cultures and context of the communities served.

Therefore, we propose to revise paragraph (a) in § 1302.82 by adding language to clarify that if a program chooses to use a curriculum with pregnant women and people, they should select a curriculum that focuses on maternal and child health. We believe this will improve maternal and child outcomes by helping to reduce prematurity and low birth weight, as well as support increased initiation and continuation of breastfeeding and other healthy infant feeding.

ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Standards of Conduct (§ 1302.90)

Section 1302.90(c) establishes the standards of conduct for all staff, consultants, contractors, and volunteers, which are part of a program's personnel policies. Given how critical child safety is in Head Start programs, we propose revisions to these requirements to ensure we are as clear as possible and that our requirements reflect current best practices and more precise terminology.

The proposed revisions to this section would align definitions related to child maltreatment with other Federal resources. We propose this alignment to facilitate understanding of staff responsibilities related to child health, mental health, and safety incidents. Additionally, the proposed revisions would underscore typical responsibilities of mandated reporters[237] of child abuse and neglect, which applies to all Head Start staff. These responsibilities include reporting when an individual ''suspects or has reason to believe that a child has been abused or neglected,'' or when a reporter has knowledge of or observes ''conditions that would reasonably result in harm to the child.''[238] The proposed changes further clarify that reports must include suspected or known incidents perpetrated by Head Start staff before they have been verified.

First, we propose to redefine and reorganize provisions related to the prohibition of child maltreatment or endangerment in § 1302.90(c)(1)(ii). First, in § 1302.90(c)(1)(ii) we propose to remove the phrase ''do not maltreat or endanger the health or safety of children, including at a minimum, that staff must not'' and replace it with ''do not engage in behaviors that would be reasonably suspected to negatively impact the health, mental health, or safety of children, including at a minimum.'' We believe the proposed revisions set a higher yet reasonable standard for staff conduct to include prohibition of behaviors that have the potential to negatively impact children. We believe removing the word ''maltreat'' from this paragraph and instead providing clearer definitions and examples of maltreatment in the subsection that follows will provide greater clarification about expectations. The inclusion of children's mental health as a potential area of impact is proposed to underscore that a behavior does not have to cause physical harm to a child to be of notable concern for a child's well-being. This understanding is consistent with research and guidance in the field of child maltreatment.[239]

More specifically, under § 1302.90(c)(1)(ii), we propose to remove paragraphs (A) through (I) in their entirety and to replace these with paragraphs (A) through (D), each of which specifies a category of potential child abuse or neglect including a definition and specific examples. First in new paragraph (A) we define corporal punishment or physically abusive behavior as the intentional use of physical force that results in, or has the potential to result in, physical injury. Examples in the definition include, but are not limited to, hitting, kicking, shaking, biting, forcibly moving, restraining, force feeding, or dragging a child. Next in new paragraph (B) we define sexually abusive behavior as any completed or attempted sexual act, sexual contact, or exploitation. Examples in the definition include, but are not limited to, behaviors such as inappropriate touching, inappropriate filming, or exposing a child to other sexual activities. Next in new paragraph (C) we define emotionally harmful or abusive behavior as behaviors that harm a child's self-worth or emotional well-being or behaviors that are insensitive to the child's developmental needs. Examples in the definition include, but are not limited to, using isolation as discipline, exposing a child to public or private humiliation, or name calling, shaming, intimidating, or threatening a child. Finally, in new paragraph (D) we define neglectful behavior as the failure to meet a child's basic physical and emotional needs including access to food, education, medical care, appropriate supervision by an adequate caregiver, and safe physical and

[236] Britta C. Mullany, S Becker, MJ Hindin, The impact of including husbands in antenatal health education services on maternal health practices in urban Nepal: results from a randomized controlled trial, *Health Education Research,* 22(2), April 2007, Pages 166–176.

[237] ''Mandated'' reporter or reporting refers to statutory requirements related to mandatory reporting of suspected instances of child abuse and neglect by individuals as applicable under State law and in accordance with the Federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. 5106a(b)(2)(B)(i).

[238] Child Welfare Information Gateway. (2019). *Mandatory reporters of child abuse and neglect.* Washington, D.C.: U.S. Department of Health and Human Services, Children's Bureau.

[239] Leeb R.T., Paulozzi L., Melanson C., Simon T., Arias I. (2008). Child *Maltreatment Surveillance: Uniform Definitions for Public Health and Recommended Data Elements, Version 1.0.* Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control.

emotional environments. Examples in the definition include, but are not limited to, withholding food as punishment or refusing to change soiled diapers as punishment. These proposed categories, definitions, and examples of potential child maltreatment are adapted from the CDC resources, *Child Maltreatment Surveillance: Uniform Definitions for Public Health and Recommended Data Elements* [240] and an online *Fast Facts* review of child abuse and neglect prevention.[241] The CDC resources were established through extensive consultation with experts to recommend consistent terminology related to potential child maltreatment. By providing definitions, we intend to clarify that adults in Head Start programs may not engage in any behavior that may have potential to negatively impact children. The examples are intended to provide more concrete information for clarification but are not an exhaustive list. The proposed paragraphs (A) through (D) retain some examples from the current standards that have been of particular concern to early child care settings according to internal data. Namely, we retained behaviors related to corporal punishment, public or private humiliation, and feeding and toileting practices as punishment in the examples. Forcibly moving and restraining are included as examples because they are also harmful to children's well-being.

Furthermore, under § 1302.90(c)(1), we propose to add a new paragraph (c)(1)(iii) that clarifies the requirement to ensure staff, consultants, contractors, and volunteers report reasonably suspected or known incidents of child abuse and neglect, as defined by the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note) [242] and in compliance with Federal, State, local, and Tribal laws. We believe that including this provision in the standards of conduct will bring attention to existing requirements that all staff are mandated reporters of suspected incidents of child abuse and neglect, even in the absence of definitive proof and even in instances in which the reporting staff member did not directly engage in or witness the alleged behavior. The Federal definition in CAPTA provides a minimum standard that ''the term 'child abuse and neglect' means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation (including sexual abuse as determined under section 111), or an act or failure to act which presents an imminent risk of serious harm.'' Programs must also comply with State, local, and Tribal laws, which may have additional stipulations related to defining child abuse and neglect and other requirements for mandated reporting. If there are differences between Federal and State, local, and Tribal laws, programs should comply with the more stringent regulation. As a result of this proposed new paragraph (iii), we propose to redesignate in § 1302.90(c)(1) current paragraphs in (iii), (iv), and (v) as paragraphs (iv), (v), and (vi), respectively.

In redesignated § 1302.90(c)(1)(iv), formerly § 1302.90(c)(1)(iii), we propose to remove the phrase ''child and family'' and replace it with ''each individual.'' This proposed change to ensure staff are included is aligned with efforts to promote well-being and safety across Head Start and increase the supportive and responsive relationships among staff.

Finally, the requirement in Standards of Conduct for staff at redesignated paragraph § 1302.90(c)(1)(vi), formerly § 1302.90(c)(1)(v), underscores that children cannot be left alone or unsupervised by staff, consultants, contractors, or volunteers under their care. However, as it is currently written, the language can be erroneously interpreted to mean that a child may be left solely under the supervision of volunteers. ACF has been clear that this is not allowed, and § 1302.94(b) states that ''a program must ensure children are never left alone with volunteers.'' For this reason, we propose to update the provision at § 1302.90(c)(1)(vi).

Specifically, we propose to remove the phrase ''by staff, consultants, contractors, or volunteers while under their care'' in paragraph (v). The stem of § 1302.90 (c)(1) reads ''a program must ensure all staff, consultants, contractors, and volunteers abide by the program's standards of conduct that:'' and effectively captures the applicable subjects of the requirement without allowing for alternative inaccurate interpretations of the requirement. This update to the language is not a policy change but rather clarifies the long-standing requirement to prevent any misinterpretation and to bring it into full alignment with requirement § 1302.94(b).

ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Staff Training To Support Child Safety (§ 1302.92; § 1302.101)

As described in the earlier section on *Workforce Supports: Employee Engagement,* § 1302.92 establishes requirements for staff training and professional development. Specifically, § 1302.92(b) requires programs to establish and implement systematic approaches to training and professional development in key areas. We know Head Start programs are experiencing a workforce shortage and the continued effects of the pandemic, both of which place significant stress on staff.[243] We also know that higher caregiver stress and lower quality caregiver-child relationships can be risk factors for child abuse and neglect, and that prevention of child abuse and neglect often relies on strategies to reduce caregiver stress, increase caregiver supports, and foster higher quality caregiver-child relationships.[244] Ongoing training to build and apply staff knowledge of child development and positive guidance or other developmentally appropriate behavior strategies are critical components of reducing caregiver stress and associated risks in ECE settings.[245] Given the potential harm that any single incident may pose to children, families, and staff, we believe that providing ample

[240] Leeb RT, Paulozzi L, Melanson C, Simon T, Arias I. Child Maltreatment Surveillance: Uniform Definitions for Public Health and Recommended Data Elements, Version 1.0. Atlanta (GA): Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; 2008.

[241] Fortson B, Klevens J, Merrick M, Gilbert L, Alexander S. (2016). Preventing Child Abuse and Neglect: A Technical Package for Policy, Norm, and Programmatic Activities. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Available online at *https://www.cdc.gov/violenceprevention/childabuseandneglect/fastfact.html.*

[242] 42 U.S.C. 5106g. Available online at *https://www.govinfo.gov/content/pkg/USCODE-2017-title42/html/USCODE-2017-title42-chap67.htm.*

[243] Elharake JA, Shafiq M, Cobanoglu A, Malik AA, Klotz M, Humphries JE, et al. Prevalence of Chronic Diseases, Depression, and Stress Among US Childcare Professionals During the COVID–19 Pandemic. Prev Chronic Dis 2022;19:220132. DOI: *http://dx.doi.org/10.5888/pcd19.220132.* NAEYC, ''NAEYC Pandemic Surveys,'' February 2022. *https://www.naeyc.org/pandemic-surveys.*

[244] Fortson, B.L., Klevens, J., Merrick, M.T., Gilbert, L.K., & Alexander, S.P. (2016). Preventing child abuse and neglect: A technical package for policy, norm, and programmatic activities. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Daly & Dowd (1992), Characteristics of effective, harm free environments for children in out of home care, *Child Welfare,* 71(6):487–96.

[245] Koralek, D. (1992). Caregivers of young children: Preventing and responding to child maltreatment. U.S. National Center on Child Abuse and Neglect, Department of Health and Human Services. Available online at *https://www.ojp.gov/pdffiles1/Digitization/142411NCJRS.pdf.*

opportunities to learn and practice safety skills is essential to preventing incidents. This emphasis is of utmost importance to the Head Start population since younger children are more likely to be victims of child abuse and neglect.[246] In this section, we propose revisions and an addition to emphasize training and professional development related to child safety.

In § 1302.92(b)(2), we propose to add a requirement that mandated reporter training is conducted on an annual basis. We believe that more frequent training will support staff in recognizing potential child abuse and neglect and understanding their legal responsibility as a mandated reporter. Many states do not require mandated reporter trainings[247] but all Head Start staff are mandated reporters regardless of whether they work directly with children and, as previously noted, young children are a particularly vulnerable population. We believe this proposed policy change will create more equitable opportunities for staff to understand and discuss their ethical and legal responsibilities. The greater frequency of training would also allow programs to offer staff advanced training opportunities on areas of local importance or greater complexity, such as culturally responsive practices in reporting, issues related to disproportionate reporting, and information about at-risk populations, as well as emphasize the importance of child safety in Head Start. We also add language to clarify expectations with more precise language in this section.

Currently, training and professional development related to using positive strategies to support children is only required for education staff, per § 1302.92(b)(5). Yet, all staff are required to use positive strategies to support children according to existing standards of conduct, per § 1302.90(c)(1)(i), and ongoing training and professional development is an effective strategy for preventing child maltreatment.[248] As such, under this section, we propose to add a new paragraph as § 1302.92(b)(3) which will require annual training on positive strategies to understand and support children's social and emotional development, including the implementation of tools for preventing and managing challenging behavior. We also believe enhancing use of positive strategies among all staff will have the added benefit of increasing opportunities for peer support as appropriate. We are prescribing general areas of focus but allowing for programs to select approaches so that programs may fulfill this requirement in ways that are responsive to their community needs and cultural practices. As a result of this proposed addition, we further propose to redesignate current paragraphs (3), (4), and (5) of § 1302.92(b) to (4), (5), and (6), respectively.

We also propose a revision to § 1302.101 which establishes management responsibilities governed by a system that enables the delivery of the high-quality services. ACF is aware that there has been inconsistent implementation of required reporting procedures.[249] In order to promote consistent implementation of paragraph (a)(5), we propose to add a new clause to § 1302.101(a)(5) to require a system that ensures that all staff are trained to implement reporting procedures in § 1302.102 (d)(1)(ii). By requiring that programs provide training on reporting procedures, we anticipate that staff will have greater familiarity with and understanding of institutional reporting procedures. Additionally, with an implementation system in place, ACF may more easily provide guidance on what steps should be taken to ensure that staff report incidents appropriately.

Incident Reporting (§ 1302.102)

Section 1302.102 outlines the requirements that programs establish program goals and a process for monitoring program performance, including how programs use data and report out to the governing body and policy council. Paragraph (d) of § 1302.102 establishes required reports that programs must submit for monitoring and oversight purposes, and § 1302.102(d)(1)(ii) specifically addresses required incident reports.

In the years of implementing these provisions since the 2016 revision of the HSPPS, it is evident that child incidents are not always reported to the OHS Regional Office or are not reported in a timely manner. The importance of reporting child incidents to OHS cannot be overstated. We propose several changes to § 1302.102(d)(1)(ii) to make clear and strengthen the reporting requirements associated with child health and safety incidents.

Section 1302.102(d)(1)(ii) introduces general requirements related to when and to whom incident reports should be submitted and specifies types of situations that require incident reports. We make two changes to § 1302.102(d)(1)(ii). First, we propose to remove the phrase ''as soon as practicable'' and replace it with ''no later than 3 business days following the incident'' to clarify the timeline by which programs are expected to make reports. The timeline of three business days more closely aligns our institutional reporting practices with child welfare reporting practices, which often require reports to be filed within 48 hours of learning of a suspected incident. Shortening the timeline will allow for earlier processing and monitoring of reports, and for more expedient access to technical assistance or other supports for programs when needed.

Our second proposed change is to add two new paragraphs to § 1302.102(d)(1)(ii) to clarify reportable incidents. First, the new § 1302.102(d)(1)(ii)(A) describes one type of reportable incident as any significant incident that affects the health, mental health, or safety of a child that occurs in a setting where Head Start services are provided and that involve either a Head Start adult or Head Start child, as further defined below. This change clarifies that mental health incidents are included in significant incidents and that only those incidents that occur in settings where Head Start services are provided, such as a Head Start program, playground, or transportation utilized by a Head Start program, are reportable to OHS. This definition is intentionally broad and intended to capture any setting for which Head Start funding is used. The following two new sub-paragraphs clarify who must be involved in the incident in order for it to be reportable to OHS. Reportable incidents include those that involve either (I) a staff member, contractor, volunteer, or other adult that participates in either a Head Start program or a classroom at least partially funded by Head Start, regardless of whether the child receives Head Start services; or (II) a child that receives services fully or partially funded by Head Start or a child that participates in a classroom at least partially funded by Head Start.

The proposed change is intended to expand incidents that are reportable to Head Start to include more individuals

[246] U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2022). Child Maltreatment 2020. Available from *https://www.acf.hhs.gov/cb/data-research/child-maltreatment.*

[247] Lee, J. & Weigensberg, E. (2022). ''How Do Laws and Policies for Reporting Child Abuse and Neglect Vary Across States?'' OPRE Report #2022–165. Washington, D.C.: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[248] National Center for Community-Based Child Abuse Prevention (CBCAP).

[249] OIG Final Report: *ACF Should Improve Oversight of Head Start To Better Protect Children's Safety,* OEI–BL–19–00560.

than the current standard. However, incidents that do not meet both of these conditions: (1) a child incident that occurs in a setting where Head Start services are provided and (2) that involves a person described by either § 1302.102(d)(1)(ii)(A)(I) or § 1302.102(d)(1)(ii)(A)(II), would be beyond the scope of what is reportable to OHS. We note that these incidents may still be reportable to other agencies, such as child care licensing agencies.

We retain the language in the current standard describing another type of reportable incident in the new § 1302.102(d)(1)(ii)(B), which pertains to circumstances affecting the financial viability of the program; breaches of personally identifiable information, or program involvement in legal proceedings; or any matter for which notification or a report to State, Tribal, or local authorities is required by applicable law.

Additional proposed language also requires programs to report other health, mental health, or safety incidents of concern to Head Start that are not explicitly named in the sections that follow. The following subsections of redesignated § 1302.102(d)(1)(iii) describe minimum expectations for situations that require an incident report to be submitted. We propose several changes to further clarify and strengthen incident reporting requirements. We note that some of the changes describe situations that are currently expected to require incident reports. However, our goal in including them explicitly in the list of minimally reportable incidents is to make this expectation clear and facilitate navigation and understanding of the OHS reporting requirements.

First, we propose to add ''mandated'' to § 1302.102(d)(1)(iii)(A) to provide clarification that any incidents involving mandated reporter responsibilities should be reported to Head Start as well as the appropriate State, local, or Tribal authority, independent of the status of investigation or outcome of such reports.

Second, in § 1302.102(d)(1)(iii)(B) we propose to remove ''for any reason'' and replace it with ''except for circumstances such as natural disasters that interfere with program operations.'' This revision is intended to account for circumstances where it may be unsafe or unreasonable to expect a program to report center closings within the proposed revised timeline in § 1302.102(d)(1)(ii) especially if communication channels are not operable.

Next, we propose to add three new paragraphs (E), (F), and (G) to § 1302.102(d)(1)(iii) to better describe the types of incidents that should be reported to OHS. First, we propose a requirement that programs report any suspected or known violations of Standards of Conduct under § 1302.90(c)(ii). The standards of conduct, described in the earlier section, *Standards of Conduct,* outline behaviors that staff must not engage in that would be reasonably suspected to negatively impact the health, mental health, and safety of children. Therefore, the addition of § 1302.102(d)(1)(iii)(E) is intended to clarify that programs must submit incident reports for any violations of Head Start standards of conduct in § 1302.90(c)(ii), even if those violations do not require a mandated report under State, Tribal, or local law.

The second addition to incidents that should be reported to OHS is significant health or safety incidents related to suspected or known lack of supervision or lack of preventative maintenance in § 1302.102(d)(1)(iii)(F). This addition is intended to clarify that programs must submit reports for significant incidents that may be associated with reasonably suspected or known lack of appropriate supervision or failure to carry out reasonably expected maintenance, such as maintenance of playground equipment. We acknowledge that some incidents involving injuries to children may be unintentional and unavoidable. Therefore, we wish to provide clarity about which health and safety incidents should be reported to OHS. We consider *significant* incidents in these cases to be those that result in serious injury or harm to a child, specifically incidents that require hospitalization or emergency room care, such as a broken bone; severe sprain; chipped or cracked teeth; head trauma; deep cuts; contusions or lacerations; or animal bites. In addition, we would like to clarify that lack of supervision while in the care of program staff includes leaving a child unsupervised anywhere on the grounds of a Head Start facility, such as in a classroom, bathroom, or on a playground, as well as outside the facility, such as in a parking lot, on a nearby street, on a bus, or during another program-approved transportation or excursion. Including these types of incidents in what is reportable to Head Start allows us to expedite access to technical assistance or other supports, as needed, to address systemic issues that impact children's health and safety.

The third addition of § 1302.102(d)(1)(iii)(G) describes any unauthorized release of a child as a reportable incident and is intended to ensure that programs submit reports for incidents involving the unauthorized release of children. Unauthorized release occurs when a child is released from a Head Start facility, bus, or other approved program transportation to a person without the permission or authorization of a parent or legal guardian and whose identity had not been verified by photo identification. This addition codifies expectations outlined in ACF–IM–HS–22–07 and aligns with Caring for Our Children standards.[250]

Finally, we propose to revise the title for § 1302.102 ''Achieving Program Goals'' to read ''Program Goals, Continuous Improvement, and Reporting,'' to clarify the contents of this section and further improve ease of navigation.

ACF seeks public comment on how the proposed requirements in this section may differentially impact different communities. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Facilities Valuation (§ 1303.44)

Section 1303.44(a)(7) establishes that if a grant recipient is preliminarily eligible under § 1303.42 to apply for funds to purchase, construct, or renovate a facility, the recipient must submit to the responsible HHS official, among other requirements, an estimate by a licensed independent certified appraiser of the facility's fair market value.

Fair market value can take many forms; this depends on the purpose or intended use of the valuation. Appraisers generally rely on three methods of establishing real estate value, which complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and local guidelines: sales approach, cost approach, and income approach. Sales approach compares the sales price of comparable facilities, and it accounts for the price at sale of the facility. Cost approach evaluates the cost to reproduce or replace an equivalent facility, and it accounts for the acquisition cost of the land, construction expense, and depreciation of the property. Income approach estimates the value based on income potential of an equivalent facility.

[250] Caring for our Children. (2022). *Chapter 9.2: Policies.* National Resource Center for Health and Safety in Child Care and Early Education, Department of Health and Human Services. Available online at *https://nrckids.org/CFOC/Database/9.2.4.8.*

Applications under this section include applications for constructions, purchase, and significant renovation to facilities. Based on a review of applications to purchase, construct, or renovate facilities, the cost approach to valuation is most relevant.

The sales approach can be problematic since many facility projects show large discrepancies in sales valuation and total project cost, particularly as real property sales prices depend heavily on the locality of the property. Sales valuation does not account for the large cost needed to ready the property for its intended use.

Sales approach can be relevant for certain proposed facility projects, but when relevant, it is already covered by other required activities under § 1303. Specifically, recipients are required to compare the cost associated with the proposed action to other available alternatives in the service area, pursuant to § 1303.45. Requirements under § 1303.45 discover the actual purchase cost of comparable alternate facilities in the service area and therefore the sales approach valuation remains less relevant to require in paragraph (7) of § 1303.44(a).

Head Start facilities are woven into the fabric of communities they serve as highly valued, safe spaces for children and families. This is especially important as Head Start programs are often located in low-income communities and geographic areas with a high concentration of poverty. Programs are often also located in communities with more people of color as people of color are more likely than their white counterparts to live in low-income neighborhoods. For instance, in 2020, about 14 percent of people of color lived in high-poverty neighborhoods, compared to about 4 percent of White people.[251] Head Start programs are known to invigorate their communities including the development of strong partnerships with many local community-based organizations.[252] As such, it is essential that Head Start programs receive accurate valuation of facility project costs to ensure responsible acquisition of facilities continues in communities in need.

For these reasons, we propose to eliminate from § 1303.44(a)(7) the term ''fair market'' and replace it with the term ''cost'' because the cost valuation is most relevant in determining fair cost of a facility acquisition action under this section. This will assist the awarding agency in making determinations on proposed project costs and fair market costs.

We welcome any additional public comments on the 45 CFR 1303 process and associated requirements. We specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Definition of Income (§ 1305.2)

The current HSPPS definition lists several types of income sources that could be included in the calculation of gross income and references additional sources that can be found in a lengthy document from the Census Bureau. The current definition has caused confusion regarding what should be included in income calculations. We propose to revise the definition of income to make it up to date, clear, and less burdensome to implement. The proposed language provides a clear and finite list of what is considered income. It also provides clarification on what is not considered income as it relates to military income and refundable tax credits and public assistance. These changes are to ensure programs can more easily identify an applicants' income. This will also promote consistent interpretation on what to include in calculating income across programs.

Specifically, we proposed to strike the current definition: ''*Income* means gross cash income and includes earned income, military income (including pay and allowances, except those described in section 645(a)(3)(B) of the Act), veteran's benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income,'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185 (available at *https://www2.census.gov/prod2/popscan/p60-185.pdf).*

We propose to replace the definition and define income as gross income that only includes wages, business income, veteran's benefits, Social Security benefits, unemployment compensation, alimony, pension or annuity payments, gifts that exceed the threshold for taxable income, and military income (excluding special pay for a member subject to hostile fire or imminent danger under 37 U.S.C. 310 or any basic allowance for housing under 37 U.S.C. 403 including housing acquired under the alternative authority under 10 U.S.C. 169 or any related provision of law). The revised definition is clear that gross income only includes sources of income provided in the definition; it does not include refundable tax credits nor any forms of public assistance.

As mentioned previously, the current HSPPS definition includes a link to a 250+ page Census Bureau document from 1992. We believe the definition and reference to the document are outdated and complicated for programs to utilize. We propose to remove the current reference to this dated Census report and replace the definition with a finite number of income sources and remove the reference to the Census Bureau report. The proposed revision includes many sources of income from the definition in the Census Bureau document currently cited.

The proposed language removes the term ''cash'' from ''gross cash income'' in recognition that most income is not provided in the form of cash. The word ''only'' is proposed before ''includes'' to clearly define a finite list of sources considered income for Head Start purposes. Further the proposal replaces the term ''earned income'' with more specific terms ''wages,'' and ''business income.'' Business income includes income obtained from rental properties, as defined by the Internal Revenue Service.[253] We also do not propose to include ''dividends'' or ''capital gains'' to avoid unnecessary burden in requesting this information from families since we believe it unlikely Head Start applicants would have such sources of income that would make them ineligible for Head Start, and these terms may be difficult to understand and cause confusion to families during the eligibility determination process.

We remove ''public assistance'' from the definition because if a family is receiving SNAP, TANF, or SSI, then they are already eligible for Head Start. Removing this source of income reduces the administrative burden of calculating income from such sources. The current referenced Census Bureau document includes ''regular contributions from others not living in the household,'' which we do not include in the proposal. We interpret this to mean money received periodically to assist the family in meeting basic needs. We do not believe one-time or periodic gifts should be counted as income for Head Start eligibility purposes, especially since it may not be relied upon as a regular source of income. We have determined that these payments should be considered gifts and therefore not

[251] National Equity Analysis. (2020). *Neighborhood poverty: All neighborhoods should be communities of opportunity.* Retrieved from: *https://nationalequityatlas.org/indicators/Neighborhood_poverty.*

[252] Phillips, D. A. & Cabrera, N. J. (eds.) (1996). *Beyond the Blueprint: Direction for Research on Head Start's Families.* Washington, DC: National Academies Press.

[253] See: *https://www.irs.gov/taxtopics/tc407.*

taxable until they reach the IRS threshold for gifts which is $17,000 for 2023 and updated on an annual basis. Therefore, we propose to include ''gifts that exceed the threshold for taxable income'' as a source of income.

To facilitate the implementation of the exclusions from military pay specified by the Head Start Act, we detail the exclusions from military pay as designated in the statute rather than referencing it. We propose this to allow programs and families to determine what counts as income through the definition in the regulations.

We clarify that gross income only includes sources of income provided in the definition, and does not include refundable tax credits nor any forms of public assistance, to be explicit that this is a finite list of sources of income and call out two common other sources of income that might be inadvertently considered to be added. Although the finite list does not include refundable tax credits, we are concerned that programs may include it as part of the ''wages'' category. We believe this makes it clear that the tax credits commonly received by Head Start applicants such as the Earned Income Tax Credit and the Child Tax Credit are not included as part of calculated income. Furthermore, the finite list of sources of income intentionally precludes any other emergency or temporary forms of income or assistance from being included in calculations of income for eligibility purposes, such as the enhanced unemployment insurance that was available during the COVID–19 pandemic.

All the revisions proposed together simplify the definition of income and clarify how it will be implemented consistently across programs when determining income eligibility for Head Start. We seek public comment on this definition so that we ensure this is the most accurate and streamlined definition. We also specifically request public comment from the special populations served by Head Start, including AIAN and MSHS programs and communities.

Definition of Federal Interest and Major Renovations (§ 1305.2)

ACF has received questions that suggest our definitions of *Major Renovation* and *Federal Interest* are too imprecise and consequently lead to Head Start grant recipients misinterpreting and inconsistently applying the definitions when filing an official Notice of Federal Interest (NOFI). In this section, we propose technical fixes and additional clarifying language to address common questions. The proposed changes do not substantively change the meaning of the definitions, but rather clarify issues that have arisen since the implementation of the 2016 revisions to the HSPPS. ACF believes these minor revisions encourage recipients to maintain safe and updated facilities.

First, we propose changes to the definition of *Major Renovation.* We propose to address a typo in the definition—the term, ''collection renovation''—and in amending this minor error, we offer some additional text to improve understanding. Furthermore, we add additional text to clarify that separate renovation activities only equate to a major renovation if (1) they have a cost equal to or exceeding $250,000, (2) the renovation activities are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, and (3) per § 1303.44, certification from a licensed, independent architect or engineer indicates that the repair(s) adds significant value to the real property to be repaired or extends its useful life. If these three conditions are met, the group of renovations should be understood as a *Major Renovation.*

We understand that grant recipients have been misinterpreting the definition of *Major Renovation* to include multiple renovation activities on the same facility that have a cost equal to or exceeding $250,000. To help clarify, ACF is providing the following common examples:

- A recipient completes a minor renovation to install a new roof at $150,000. The next year, the recipient replaced all the windows at a cost of $50,000. The year after that, the recipient re-surfaced the parking lot for $75,000. While this was always the case, under this clarified definition, it is clearer that the unrelated renovation project activities in this example do *not* equate to a *Major Renovation.*
- A recipient replaces the roof of one of their facilities for $200,000. Two years later, the recipient replaces the same facility's HVAC units for additional $200,000. These renovation activities are not considered a collective group of facility renovation activities because the project activities are not intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, and thus, they are *not* considered a *Major Renovation.*
- In 1 year, a recipient repairs the roofs of two different centers totaling $300,000, each for $150,000. Since these are separate centers, they are not related to the same facility and therefore, the collective renovation activities are *not* considered a *Major Renovation.*
- A recipient replaces part of their roof at one of their facilities for $200,000. Two years later, the recipient replaces another part of the same roof for $200,000. In this instance, whether the roof repairs are considered a *Major Renovation depends.* While these collective renovation activities address a specific part or feature of a facility, and are greater than the $250,000 threshold, the expenditure may not add significant value to the real property. In advance of commencing the proposed roof repairs, the recipient must submit a certification from a licensed, independent architect or engineer indicating whether the expenditure identified as repairs adds significant value to the real property to be repaired or extends its useful life. If the required certification is not provided, the activity will be classified as a *Major Renovation* and compliance with part 1303, subpart E of the HSPPS is required.
- In 1 year, a recipient repairs the roof, replaces the HVAC system, repaints walls, and renovates a bathroom, totaling $350,000. These collective renovation activities are greater than the $250,000 threshold and are occurring concurrently or consecutively to address a specific part or feature of a facility, so they are likely related. However, the expenditure may or may not add significant value to the real property so whether the repairs are considered a *Major Renovation depends.* In advance of commencing the renovations, the recipient must submit a certification from a licensed, independent architect or engineer indicating whether the expenditure adds significant value to the real property to be repaired or extends its useful life. If the required certification is not provided, the activity will be classified as a *Major Renovation* and compliance with part 1303, subpart E is required.

We propose technical fixes to the definition of *Federal Interest* to address confusion with respect to the type of facility activities that result in Federal interest and what satisfies the non-Federal matching requirement. Specifically, the proposed additional language, in tandem with the proposed definition for *Major Renovation,* clarifies the distinction between repairs and minor renovations versus purchase, construction and major renovations under § 1303, the latter of which do result in a Federal interest. This proposed definition also clarifies that the non-Federal match, which is separate from the base grant non-Federal match, is only intended to include the

non-Federal match associated with the facility activity funded under subpart E. In sum, these changes are not substantive changes to the definition itself but rather provide clarification on how Federal interest works.

Together, these proposed specified conditions to the definition of *Major Renovation,* and clarification proposed to the definition of *Federal Interest,* ultimately seek to ensure recipients understand when a group of renovations would require filing of a NOFI.

Definition of the Poverty Line (§ 1305.2)

In this section, we propose to add to § 1305.2 a definition for the term *Poverty line* that is currently used in § 1302.12 paragraph (c) and (d) on income eligibility to clarify and codify existing practice. This is only intended to codify the working definition for poverty line, including the existing practice that the HHS poverty guidelines set for the contiguous-states-and-DC also apply to Puerto Rico and U.S. Territories. The HHS poverty guidelines are used to determine income eligibility in Head Start and align with requirements in the Head Start Act set by Congress. The requirements in the Head Start Act are set by statute and cannot be changed through regulation. Therefore, we cannot consider public comments regarding changes to the poverty line.

Effective Dates

The current Head Start Program Performance Standards remain in effect until this NPRM becomes final. We propose for all changes in this NPRM to become effective 60 days after it is published as a final rule in the **Federal Register**, unless otherwise noted in this section. For section 1302.48(a), (b), and (c), while the effective date is upon publication of final rule, programs will not be monitored on the new regulatory requirements until 1 year after publication of the final rule to give programs additional time to adjust to the new regulatory requirements.

Programs may require more time to implement several proposed sections in this NPRM. Therefore, we propose a 1-year delay in implementation deadline for the proposed revisions to the following sections: § 1302.11(b); 1302.14(d); 1302.16(a)(2)(v); the changes made to remove ''assistant provider'' in 1302.23(b); 1302.45(a); 1302.82(a); and 1302.93(d).

The following sections also have longer implementation timelines, outlined below:

- § 1302.52(d)(2): 3 years after publication of final rule;
- § 1302.80(e) Enrolled pregnant women: 120 days after publication of final rule;
- § 1302.80(f) Enrolled pregnant women: 180 days after publication of final rule;
- § 1302.90(e)(1), (e)(2)(i) and (ii), (e)(3) and (e)(4): Staff wages: Effective August 1, 2031;
- § 1302.90(f) Staff benefits: 2 years after publication of final rule;
- § 1302.93(c) Staff Health and Wellness: 3 years after publication of final rule.

We request public comment on all of these proposed effective dates, including whether this is sufficient time for programs to implement the proposed changes and any possible unintended consequences.

Removal of Outdated Sections

The current HSPPS contain regulatory language associated with the last overhaul of the standards, published through a final rule in 2016. We propose to remove two sections of the standards that refer to the implementation timeline of those changes, which has since passed and therefore these sections are no longer relevant. The first section to be removed is § 1302.103 *Implementation of program performance standards.* The second is the term *Transition Period,* which is defined under § 1305.2. These changes do not represent substantive policy changes.

Compliance With Sec. 641A(a)(2) of the Act

We sought extensive input to develop this NPRM. We collaborated and consulted with many policy and programmatic expert staff in OHS, ACF's Office of Child Care, and ACF's Office of Early Childhood Development. Several staff, particularly in OHS, are former Head Start program directors, family service workers, teachers, home visitors, etc. and have extensive on the ground knowledge of Head Start program operations. We also consulted extensively with OHS regional staff who directly oversee and support Head Start grants and program operations as their primary job responsibility. We held multiple listening and input sessions with these regional office staff to identify the most challenging aspects of Head Start policy and programmatic requirements for grant recipients. We also sought their feedback on proposed policies we were considering for the NPRM. We intentionally consulted with OHS staff that oversee Migrant and Seasonal Head Start and Tribal Head Start programs, to learn about specific challenges and considerations for these programs. Similarly, we met with members of the OHS Diversity, Equity, Inclusion, and Accessibility Commission to discuss possible equity implications of the proposed changes. We consulted with experts in early childhood development including staff in ACF's Office of Planning, Research and Evaluation. These staff hold research expertise in a wide range of early childhood issues relevant to Head Start. Additionally, we reviewed many research reports on a variety of topics, including NAS reports on the workforce. Taken together, our consultation with all of these groups and sources allowed provided us with relevant data points and advice on how to promote quality across all Head Start settings.

Furthermore, over the past several years since the last revision of the HSPPS (finalized in 2016), OHS has held many webinars for grant recipients on a variety of policy and programmatic topics, including the workforce, eligibility, mental health, child health and safety, and more. OHS has also given multiple presentations on key policy and program issues at Head Start relevant conferences, including those organized by the National Head Start Association. During these webinars and conference presentations, grant recipient participants often ask questions and provide input regarding challenges with implementing various aspects of program requirements, including for different types of child and family populations and in different types of geographic settings. This allows OHS the opportunity to gain critical on-the-ground understanding of areas where the standards are confusing and could be made clearer, particularly since the 2016 revisions. We also regularly hear from Tribal leaders at OHS's annual Tribal consultations. In addition, in consultation with our OHS training and technical assistance experts, we considered the types of technical assistance requested by and provided to Head Start agencies and programs. We also reviewed findings from monitoring reports to glean more insights into where grant recipients struggle the most with implementing requirements. We also recently fielded a survey of grant recipients (November 2022) which provided real time information on workforce challenges programs are experiencing. Lastly, ACF asserts that the revisions to the HSPPS proposed in this NPRM will not result in the elimination of or any reduction in quality, scope, or types of health, educational, parental involvement, nutritional, social, or other services

required to be provided under the standards that were in effect when the Head Start Act was last reauthorized in 2007.

Severability

To the extent that any portion of the requirements arising from the rule once it becomes final is declared invalid by a court, HHS intends for all other parts of the final rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.

IV. Regulatory Process Matters

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $200 million or more, or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in Executive Order 12866, as specifically authorized in a timely manner by the Administrator of OIRA in each case. This proposed rule is a significant rule and the Regulatory Impact Analysis for this proposed rule identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule, if finalized, would result in increased expenditures by Head Start programs that exceed HHS's default threshold, we have initially determined that the proposed rule will have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would likely result in expenditures that meet or exceed this amount.

Federalism Assessment Executive Order 13132

Executive Order 13132 requires Federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This proposed rule will not have substantial direct impact on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment, see Public Law 105–277, because the action it takes in this proposed rule will not have any impact on the autonomy or integrity of the family as an institution.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.,* minimizes government-imposed burden on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The PRA requires that agencies obtain OMB approval, which includes issuing an OMB number and expiration date, before requesting most types of information from the public. Regulations at 5 CFR part 1320 implemented the provisions of the PRA and § 1320.3 of this part defines a ''collection of information,'' ''information,'' and ''burden.'' PRA defines ''information'' as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). ''Burden'' means the total time, effort, or financial resources expended by persons to collect, maintain, or disclose information.

This NPRM establishes new recordkeeping requirements under the PRA. Under this NPRM, Head Start grant recipients will be required to keep and maintain records related to salary wage scales and staff benefits, improvements to community assessment, documentation related to lead exposure, among several other requirements. In addition, changes to policies proposed in the NPRM may result in changes to existing information collections approved under the PRA, including the information collection for the existing program performance standards, the Program Information Report (PIR), applicable collections in the Head Start Enterprise Systems (HSES), and other information collections. ACF invites public comments concerning changes to existing or new information collections that may be necessary as a result of this NPRM, including on practical utility and burden.

The HSPPS are covered already by an existing OMB control number 0970–0148. This OMB control number already

covers burden associated with updating personnel policies and documenting eligibility. The below table outlines the burden of complying with the proposed standards in this NPRM. These estimated burden hours represent the additional burden to be added to this existing information collection. We estimate the burden at the appropriate level depending on the given information collection, specified in the table below (program, family, or enrollee level). In 2022, there were 3,000 Head Start programs across the country.

Information Collection	Number of respondents	Average burden hours per response	Annual burden hours
Updating written personnel policies and procedures to reflect staff wage scales and benefits and approach to staff breaks (program level)	3,000	1	3,000
Documenting eligibility with application of revised income definition (family level)	340,000	.167	56,780
Reporting child incidents within 3 business days (enrollee level)	131	.083	11
Maintenance of lead testing results and notification to families of such results (program level)	3,000	1	3,000
Documenting services to enrolled pregnant women (enrollee level)	13,000	.5	6,500
Tracking wages for Head Start staff and staff in local school districts	3,000	5	15,000
TOTAL BURDEN HOURS			84,291

V. Regulatory Impact Analysis

Introduction and Summary

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This analysis identifies economic impacts that exceed the threshold for significance under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule, if finalized, would result in increased expenditures by Head Start programs that exceed HHS's default threshold, we have initially determined that the proposed rule will have a significant economic impact on a substantial number of small entities.

No unfunded mandates would be imposed by this proposed rule. The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not likely result in unfunded expenditures that meet or exceed this amount.

B. Summary of Benefits, Costs, and Transfers

The most likely impacts of the proposed provisions depend, in large part, on funds available to Head Start programs; for example, the proposals to increase remuneration per teacher would have bigger aggregate effects to the extent that Head Start entities employ more teachers. Historically, Congress has funded Head Start at levels that exceed inflation. During the ten-year period between 2010 and 2020, Head Start appropriations grew by 25 percent, after accounting for inflation.[254] Some of the past increase in appropriations was in response to new initiatives in Head Start, such as the creation of Early Head Start-Child Care Partnerships and other quality initiatives. It is possible that this trend continues and Head Start appropriations will increase in response to the quality improvements under the proposed rule. In such a case, the regulation's effects

[254] If future Head Start appropriations designated for expansion grow at similar rates —for reasons that are independent of this proposal—then estimates reflecting growth at or below the rate of inflation (such as what appears in this regulatory impact analysis) would have a tendency toward understating effects.

manifest themselves as expenditures by taxpayers.[255] By contrast, if a comparison of the hypothetical futures with and without the rule is not characterized by a difference in Head Start appropriations or by such a difference that is *not* prompted by this proposal, then rule-induced spending would instead be shifted within Head Start.

One form that such shifting could take relates to enrollment, so it is important to distinguish between the various benchmarks for enrollment that were used for this analysis. Head Start programs receive funding for a specific number of slots (funded enrollment). Historically there has been little difference between funded enrollment and actual enrollment,[256] which represents the number of children who are actually enrolled in the Head Start programs. However, in recent years, Head Start programs have experienced significant and persistent under-enrollment where the number of children actually served is far less than the number of funded slots, due in large part to widespread staffing shortages. As Head Start programs work to improve their actual enrollment levels, many are also requesting reductions in their funded enrollment. Head Start programs are trying to right-size their funded enrollment to match their community needs, staffing realities, and fiscal constraints. It is difficult, if not impossible, to predict the net impacts of these ongoing efforts in years to come.

As such, assessing whether the rule's effects would manifest themselves as enrollment reductions is especially challenging. In theory Head Start programs could attempt to stretch their existing budgets to provide the same number of funded enrollment slots while also complying with the new requirements by choosing to not spend funding on optional activities. However, OHS believes that programs have long stretched their funding as far as is possible and are unlikely to have many optional activities available to drop.[257] Moreover, the difference between funded and actual enrollment also generates uncertainty regarding the magnitude of regulatory effects; for example, if Head Start entities use excess funding for teacher bonuses, the estimates, below, of rule-induced effects on teacher remuneration would have some tendency toward overstatement (even as the *form* of the remuneration is changing from bonuses to salaries, fringe benefits or changes in working conditions).

OHS has taken the approach of estimating all effects based on the projected FY2023 funded enrollment of 755,074, which is the highest enrollment level, funded or actual, possible absent additional appropriations specifically designated for expansion.

Using the current funded enrollment as a starting point, this analysis shows that the costs associated with the NPRM, when fully phased in after 7 years as currently proposed, can be mostly paid for by reducing enrollment levels to the FY2023 actual enrollment, leading to a funded enrollment level decline from 755,074 to 644,374.

As compared to the current enrollment level of about 650,000, this represents about a 1 percent reduction from the current number of children served. In other words, implementation of these proposed regulatory changes would be a de minimis impact on actual enrollment. With additional appropriations—in excess of cost of living adjustments to keep pace with inflation—Head Start could avoid reducing funded enrollment below current actual enrollment. This analysis includes estimates of the necessary appropriations needed under the proposed policy to serve 650,000 children, which reflects the estimated FY2023 actual enrollment. Sometimes the narrative description of this (same) analysis will be framed as estimating the increases in expenditures that would enable full implementation of this proposed rule without reducing funded enrollment below projected FY2023 funded enrollment levels.

The largest elements of the proposed rule relate to staff wages and benefits for the Head Start workforce. To fully implement the staff wage provisions, including the wage-parity targets, minimum pay requirement, and impacts associated with wage compression, expenditures on wages[258] would need to increase by about $1.0 billion (reported in nominal dollars) in 2030 and then maintained annually through a cost-of-living adjustment. In that same year, the expenditures on staff benefits, which include the policy to increase fringe benefits, would require about an additional $932 million, with further increases in line with wage growth. Also, in 2030, we identify the annual expenditures to fully implement the following provisions: staff breaks about $118 million; family service worker family assignments, $210 million; and mental health supports, $152 million. We also quantify expenditures associated with preventing and addressing lead exposure and expenditures associated with program administration.

In total, we estimate that full implementation would require an increase in expenditures of about $2.4 billion in 2030 assuming no reductions in the current funded enrollment level of 755,074, with further increases that are consistent with impacts tied to wage growth. Over a 10-year time horizon, which covers for the timeline that the proposed policies would take effect, we estimate annualized expenditures of $1.6 billion under a 3% discount rate or $1.5 billion under a 7% discount rate. In addition to calculating the expenditures necessary to fully implement the proposed rule, this analysis also considers a scenario of no additional funding above baseline funding levels (*i.e.,* funding increasing over time, to account for inflation but not in response to this regulatory proposal). Under this scenario, we estimate that Head Start programs would need to reduce the total number of funded slots available by about 15% compared to projected FY2023 funded enrollment, or 1% from estimated FY2023 actual enrollment in 2030, to fully implement the proposed rule. Table 1 reports the summary of expenditures of the proposed rule, reported in constant 2023 dollars and nominal dollars.

[254] If future Head Start appropriations designated for expansion grow at similar rates —for reasons that are independent of this proposal—then estimates reflecting growth at or below the rate of inflation (such as what appears in this regulatory impact analysis) would have a tendency toward understating effects.

[255] Some of the expenditures would, from a society-wide perspective, be categorized as costs and others would be transfers to Head Start entities and participants.

[257] Even if this were the case, OHS asserts that this is unlikely to meaningfully impact the quality of services provided to children, as the necessary components of high-quality services are required under the Head Start Program Performance Standards, and could not be dropped from program offerings.

[258] The additional benefits expenditures associated with increased wages under the wage policy at the baseline fringe rate of 24% are included in the estimated benefits expenditures.

Table 1. Summary of Expenditures of the Proposed Rule, Millions of Dollars

Category		Primary Estimate	Low Estimate	High Estimate	Units		
					Year Dollars	Discount Rate	Period Covered
Expenditures	Federal Annualized Monetized ($m/year)	$1,314			2023	7%	2024-2033
		$1,385			2023	3%	2024-2033
Expenditures	Federal Annualized Monetized ($m/year)	$1,521			Nominal	7%	2024-2033
		$1,611			Nominal	3%	2024-2033

We request comment on our estimates of benefits, costs, and transfers of this proposed rule. OHS specifically requests comment on how spending patterns when under enrolled may be different if funded enrollment were reduced and the possible impact on programs if spending were redirected towards the policies in this proposed rule.

Preliminary Economic Analysis of Impacts

A. Analytic Approach

In conducting this analysis, we began by identifying the most consequential impacts that would likely occur under the proposed rule, if finalized. We identify expenditures associated with increases in staff wages and staff benefits for the Head Start workforce as the largest potential impact and devote significant attention to those effects. We also identify and monetize expenditures associated with staff breaks, expenditures associated with hiring additional family service workers, expenditures associated with the increased workload required to provide mental health supports, expenditures associated with preventing and addressing lead exposure, and expenditures associated with administrative implementation costs. We qualitatively discuss other impacts of the proposed rule.

For the purposes of this analysis, we assume that the proposed rule, if it is finalized, will be published and begin to take effect before the 2024–2025 program year. To simplify the narrative, we describe effects occurring in that program year as occurring in '2024.' We adopt a time horizon of analysis of ten years, covering the period 2024 through 2033.

This analysis adopts a baseline forecast that assumes Federal appropriations grow at a constant rate of inflation in fiscal years 2026 through 2033, with slower growth during fiscal years 2024 and 2025.

All analyses provided here were completed using national level estimations. In our main analysis, we estimate the increases in Federal appropriations needed to fulfill the goals of the proposed rule while also maintaining the size of the Head Start workforce consistent with the projected FY2023 funded enrollment level of 755,074 slots. We also present a sensitivity analysis that explores how the rule's effects would manifest themselves if there are no increases in Federal appropriations above baseline (or such increases occur but not in response to this regulatory proposal and/or the increased appropriations could not be used to support the policies in the proposed rule). For this scenario, we report the likely reductions in funded enrollment, and associated reductions in the size of the Head Start workforce, under the proposed rule. We also report the likely reductions in funded enrollment compared to the estimated FY2023 actual enrollment under the proposed rule.

In general, we have rounded total cost estimates but have not rounded itemized cost estimates for transparency and reproducibility of the estimation process. These unrounded itemized cost estimates should not be interpreted as representing a particular degree of precision.

B. Baseline: Budget, Staffing, and Slots

Baseline Budget Scenario

We measure the impacts of the rule against a common budget baseline forecast that assumes Federal appropriations grow at a constant rate of inflation in fiscal years 2026 through 2033, with slower growth during fiscal years 2024 and 2025. We adopt 2.3% for the rate of inflation for each year in the time horizon, matching an economic assumption in the President's Budget for Fiscal Year 2024.[259] Across all years, we assume that the cost-of-living adjustment (COLA) for Head Start staff-the portion of Head Start that goes towards operations awards, will match the 2.3% rate of inflation.

In FY2023, Head Start appropriations totaled $11,996,820,000.[260] About 97% of these appropriations, $11.6 billion, will go towards operations awards; and from these operations awards, about 75% [261] will go towards personnel costs, or about $8.7 billion. Compared to FY2023, we assume that FY2024

[259] Office of Management and Budget. ''Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2024.'' Table 2–1 Economic Assumptions. *https://www.whitehouse.gov/wp-content/uploads/2023/03/spec_fy2024.pdf.*

[260] H.R. 2617—Consolidated Appropriations Act, 2023. *https://www.acf.hhs.gov/sites/default/files/documents/olab/fy-2024-congressional-justification.pdf.*

[261] Budget data submitted to the Office of Head Start for FY2022, which is the most recent data available at the time this analysis was prepared, showed that about 74% of operations awards were allocated to personnel costs. In this analysis, we assume a majority share of the savings from the projected reduction in funded enrollment from FY2022 to FY2023 will go towards personnel costs, and will therefore increase the overall share of operations awards allocated to personnel costs to about 75%.

appropriations will increase to account for inflation for operations awards, but will not increase for other spending categories. Compared to FY2024, we assume that FY2025 appropriations will again increase to account for inflation for operations awards, with a 1% increase for other spending categories. Thus, we anticipate that total appropriations will increase by 2.22% in FY2024, 2.26% in FY2025, and 2.3% in all future years. Table B1 reports the appropriations and funding breakdowns in nominal dollars over the time horizon of our analysis.

Table B1. Baseline Head Start Budget Scenario. Nominal Dollars (in thousands)

Year	Total Funding	Total Operations Awards	Operations Awards: Personnel Costs	Operations Awards: Other Costs	Other Head Start Costs
2022	$11,036,820	$10,647,160	$7,878,898	$2,768,262	$389,660
2023	$11,996,820	$11,599,855	$8,699,892	$2,899,964	$396,965
2024	$12,263,617	$11,866,652	$8,899,989	$2,966,663	$396,965
2025	$12,540,519	$12,139,585	$9,104,689	$3,034,896	$400,934
2026	$12,828,951	$12,418,796	$9,314,097	$3,104,699	$410,156
2027	$13,124,017	$12,704,428	$9,528,321	$3,176,107	$419,589
2028	$13,425,870	$12,996,630	$9,747,472	$3,249,157	$429,240
2029	$13,734,665	$13,295,552	$9,971,664	$3,323,888	$439,112
2030	$14,050,562	$13,601,350	$10,201,012	$3,400,337	$449,212
2031	$14,373,725	$13,914,181	$10,435,636	$3,478,545	$459,544
2032	$14,704,320	$14,234,207	$10,675,655	$3,558,552	$470,113
2033	$15,042,520	$14,561,594	$10,921,195	$3,640,398	$480,926

Baseline Scenario for Staffing, Wages, and Enrollment

This analysis adopts one scenario covering projections of staffing, wages, and enrollment at Head Start programs. This baseline scenario assumes long-run staffing, wages, and enrollment that are consistent with those projected for FY 2023, based on patterns observed in FY2022.

This analysis assumes that all programs are fully enrolled, and that actual enrollment is consistent with funded enrollment. Therefore, the analysis does not distinguish between funded slots that are actually filled with enrolled families and funded slots that are vacant. These assumptions introduce uncertainty into the analysis, creating some tendency toward overestimation of effects (a tendency that would partially be mitigated by a number of decisions, for example if Head Start entities use excess funds, in the baseline, for teacher bonuses).[262]

We again note that this estimation does not account for the under-enrollment that Head Start programs are currently facing. In 2023, Head Start programs are projected to be funded to serve 755,074 children; however, OHS estimates only about 650,000 children and families are actually being served. Many Head Start programs are requesting reductions to their funded enrollment, even while they continue to work to improve their enrollment. As this situation is unprecedented, it is nearly impossible to predict both funded and actual enrollment levels in future years.

As such, OHS first estimates costs by using the FY2023 funded enrollment of 755,074 which represents the funding needed to implement the proposed rule and maintain current funded enrollment, or the maximum appropriations needed to fully implement the proposed rule. Using the cost per slot determined by this estimate, we also describe the necessary appropriations needed to maintain funded slots to serve 650,000 children, which reflects the FY2023 actual enrollment. Relatedly, we also provide estimates of the reduction in the total number of funded slots in a scenario where no additional funding is provided (or funding increases occur but not in response to this proposal), compared to both projected FY2023 funded enrollment and to estimated FY2023 actual enrollment.

Our baseline scenario is informed by staffing levels, credentials, wage rates, and enrollment figures from Program Information Report (PIR) data covering 2022,[263] with a few adjustments. The PIR contains program-level counts of teachers, assistant teachers, home visitors, and family child care providers, each disaggregated by type of credential. For teachers and assistant teachers, we observe the following credential categories: advanced degree, baccalaureate degree (BA), associate degree (AA), Child Development Associate (CDA) credential, and no credential. For home visitors and family child care providers, we observe whether staff holds a credential, but not the type of credential. We make the following adjustments to the raw 2022 PIR data:

(1) We adjust the counts of each role-credential combination to account for a small share of staff without any credential information, which is less than 0.3% of total staff. For simplicity, we assume that the credentials of staff without this information are distributed in proportion with the observed credentials of other staff in the same role.

(2) We augment the 2022 PIR data with 2019 PIR data, which contained information on the specific credential

[262] For completeness, we also note that Head Start funding increases at greater than the rate of inflation (for reasons independent of this regulation being proposed) would lead to effects being underestimated in this analysis, if that funding is designated for expansion. For exploration not of overall magnitude of effects but instead related to the form they take, please see the sensitivity analysis below.

[263] *https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/program-information-report-pir.*

type for home visitors and family child care providers. We assume that, conditional on reporting any credential in 2022, the credentials of staff with each credential type are distributed in proportion with observed credentials of other credentialed staff in the same role in 2019.

With these adjustments, we report 36,517 Head Start teachers, 32,286 Early Head Start teachers, 38,316 Head Start assistant teachers, 6,676 home visitors, and 2,046 family child care providers. Table B2 reports these counts by credential type.

Table B2. Head Start Staff Counts by Role and Credential, 2022

Degree	HS Teacher	EHS Teacher	Asst. Teacher	Home Visitor	Family Child Care Provider
Advanced	4,528	754	371	429	38
BA	21,080	6,405	3,712	2,964	217
AA	8,774	7,271	8,178	1,444	241
CDA	1,181	12,791	15,416	1,128	1,238
No Credential	954	5,065	10,639	711	312
Total	36,517	32,286	38,316	6,676	2,046

In 2022, Head Start programs were funded to serve 833,075 slots and reported 115,841 education staff. At the time this analysis was prepared, ACF did not have comparable information from the PIR for 2023, which is ongoing; however, we anticipate significant changes to staffing levels, wage rates, and slots compared to those observed in 2022 for reasons described above. We anticipate enrollment reductions, including through requests from programs proposing to reduce their funded enrollment to maintain quality of program services.[264] We currently project 755,074 funded slots, or a 9% reduction in funded enrollment in 2023 compared to 2022, and adopt a corresponding reduction in education staff by the same percentage. Compared to a scenario of no reduction in slots or education staff, we anticipate that this will lead to increases in total compensation for education staff. Again, this does not reflect the difference between funded enrollment and actual enrollment of families in the program. OHS anticipates that funded enrollment will continue to decline; however, for the reasons described above, we model projections based on funded enrollment in 2023 at 755,074 for the purposes of this analysis.

Table B3. 2023 Enrollment Scenarios

Year	2022	2023
Scenario	**N/A**	**Baseline**
Operations Award Amounts	$10,647,159,826	$11,599,855,394
Personnel Costs, Share	74%	75%
Personnel Staff Costs, $	$7,878,898,271	$8,699,891,546
Other Costs, Share	26%	25%
Other Costs	$2,768,261,555	$2,899,963,849
Education Staff	115,841	104,995
Education Staff Costs	$4,994,940,873	$5,515,421,367
Wage Compensation	$3,796,155,063	$4,191,720,239
Non-Wage Compensation	$1,198,785,809	$1,323,701,128
Cost per Education Staff	$43,119	$52,530
Total Slots	833,075	755,074
Cost per Slot	$12,781	$15,363

[264] *https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-22-09.*

Connecting Baseline Uncertainty With Differing Estimates of Regulatory Effects

Head Start programs must be in a position to serve their full funded enrollment at all times, regardless of their actual enrollment levels. When programs are under-enrolled, they must continue their operations in a way that is sufficient to serve their funded enrollment. As Head Start funds are allocated to a variety of fixed cost categories (like facilities, personnel, supplies, and transportation), only some of these costs are saved when a funded slot is empty. If a slot is empty, a program must still pay for a facility with classrooms, along with utilities and maintenance. Programs must also attempt to hire (or, spend the associated funds recruiting) staff, and have transportation that can accommodate the slot. Where there is a difference between actual and funded enrollment, the majority of the difference in allocated funding is used in this manner, thus doing little to improve the Head Start experience for remaining students.

Therefore, to the extent that under-enrolled Head Start programs will, over the analytic time horizon of this regulatory impact assessment, be approved to reduce their funded enrollment *without* those slots being shifted to other Head Start entities, the estimates that use actual enrollment as a key input or comparison—for example, the rightmost columns of Tables J1 and K5—are informative and meaningful. By contrast, if reductions of funded enrollment at entities that are under-enrolled in the baseline were accompanied (also in the baseline) by shifting of those slots to other Head Start entities, the estimates that use *funded* enrollment as a key comparison are more informative. Similarly, if under-enrollment were to ease in the future (perhaps to due further stabilization in the labor market as the biggest disruptions of the COVID–19 pandemic recede into the past), the latter set of estimates should receive the analytic focus.

C. Workforce Supports: Staff Wages and Staff Benefits

The proposed rule outlines four areas of proposed requirements for wages for Head Start staff: (1) that education staff working directly with children as part of their daily job responsibilities must receive a salary comparable to preschool teachers in public school settings in the program's local school district, adjusted for qualifications, experience, and job responsibilities; (2) to establish or enhance a salary scale, wage ladder, or other pay structure that applies to all staff in the program and takes into account job responsibilities, hours worked, and qualifications and experience relevant to the position; (3) that all staff must receive a salary that is sufficient to cover basic costs of living in their geographic area, including those at the lowest end of the pay structure; and (4) to affirm and emphasize that the requirements for pay parity should also promote comparability of wages across Head Start Preschool and Early Head Start staff positions.

The proposed rule also outlines requirements for grant recipients to provide benefits to staff, discussing health insurance, paid sick leave, paid vacation or personal leave, paid family leave, access to short-term free or low-cost mental health services, and other considerations. We also describe an alternative policy scenario in which retirement benefits are also included in the proposed benefit requirements, see Section K below.

In this section, we describe baseline wages for Head Start education staff and their corresponding wage-parity targets. We also describe baseline staff benefits and the enhanced-benefit policy.

Wage-Parity Targets

The proposed rule would result in Head Start staff receiving an annual salary commensurate with preschool teachers in local public school settings, adjusted for qualifications, experience, and job responsibilities. The target comparison of preschool teachers in public school settings is intended to represent substantial progress towards parity with public school elementary teachers. Specifically, we intend the benchmark of preschool teacher annual salaries in public school settings to represent about 90% of kindergarten teacher annual salaries, for those with comparable qualifications.[265] While wage rates would be determined locally, we present estimates of the likely impact measured at the national level.

For the purposes of this analysis, we adopt an estimate of the target salary in 2022 of $53,200, which corresponds to the mean annual wage for preschool teachers in elementary and school-based settings as reported by the Bureau of Labor Statistics for occupation code 25–2011, Preschool Teachers, Except Special Education for 2022.[266] This estimate is intended to be consistent with the requirement that annual salaries be ''comparable to preschool teachers in public school settings.'' We assume that a typical Preschool teacher works 1,680 hours per year, so this annual salary corresponded to a $31.67 hourly wage in 2022, or a $32.95 hourly wage in 2023 under an assumption that Preschool teacher salaries will grow approximately in relation to inflation.[267]

We adopt this estimate as the hourly wage target for teachers, home visitors, and family child care providers with a BA, which serves as the base wage rate for other credentials. For staff in these roles with an advanced degree (*i.e.,* master's degree or higher), we adopt an hourly wage target 10% above the base wage rate; for AA degrees, 20% below the base wage rate; for CDA, 30% below the base wage rate; and for no credential, 40% below the base wage rate. For assistant teachers, who often have fewer responsibilities than lead teachers, we adopt hourly wage targets that are about 17% less than other roles. For example, the wage rate target for assistant teachers with a BA is $27.35 per hour. Table C1 reports the hourly wage targets for each staff role by credential under the proposed rule and the baseline scenario.

We note that the assumption that a typical Preschool teacher works 1,680 hours per year differs with the source of the annual wage data comparison. U.S. Bureau of Labor Statistics (BLS) assumes a ''year-round, full-time hours figure of 2,080 hours'' which is consistent with a 40-hour work week for all 52 weeks of the year. The proposed policy requires comparable *annual* salaries, however hourly estimates are provided and used here for the purposes of calculating the estimated impacts of the proposed policies. We have therefore chosen to calculate the hourly target wage using 1,680 hours, which is our estimate of the number of paid hours worked by preschool education staff. We request comment on the best approach to handle the discrepancy in assumptions about the number of hours worked. In particular, we request

[265] This analysis uses BLS average annual salaries as wage targets. However, since the BLS national average for kindergarten teacher salaries ($65,120) includes all kindergarten teachers, of which approximately half have a master's degree or higher, adjust this annual salary to reflect the target salary for a teacher with a bachelor's degree ($58,608) guided by salary differences observed in National Center for Education Statistics data (*https://nces.ed.gov/surveys/ntps/*). The BLS reported annual salary for preschool teacher in school settings ($53,200) is therefore approximately 90% of the annual salary for kindergarten teachers with a bachelor's degree ($58,608).

[266] U.S. Bureau of Labor Statistics. Occupational Employment and Wages. May 2022. 25–2011 Preschool Teachers, Except Special Education. *https://www.bls.gov/oes/current/oes252011.htm.*

[267] Multiplied by a ratio of May 2023 (304.127) to May 2022 (292.296) CPI. U.S. Bureau of Labor Statistics. CPI for all Urban Consumers (CPI–U), Not Seasonally Adjusted, *https://data.bls.gov/timeseries/CUUR0000SA0.* Accessed June 19, 2023.

comment on the best estimate for the annual hours worked by Head Start education staff, as well as by preschool teachers in public school settings. We further request comment on the degree to which paid hours worked aligns with actual hours worked, as education staff in both Head Start and preschools in public school settings may perform additional work tasks outside official work hours.

Table C1. Hourly Wage Targets by Credential Under Wage-Parity Targets (Constant 2023 dollars)

Degree	HS Teacher	EHS Teacher	Asst. Teacher	Home Visitor	Family Child Care Provider
Advanced	$36.24	$36.24	$30.08	$36.24	$36.24
BA	$32.95	$32.95	$27.35	$32.95	$32.95
AA	$26.36	$26.36	$21.88	$26.36	$26.36
CDA	$23.06	$23.06	$19.14	$23.06	$23.06
No Credential	$19.77	$19.77	$16.41	$19.77	$19.77
Weighted Average	$31.11	$25.56	$19.87	$28.66	$24.24

To estimate the likely impact of the wage-parity policy on expenditures, we calculate the expenditures under the baseline scenario, then calculate the expenditures needed to fund the wage increases. Table C2 reports these impacts under the baseline scenario. Note that these are reported in constant 2023 dollars.

Table C2. Expenditure on Wages to Fund Wage Parity, Constant 2023 Dollars

	HS Teacher	EHS Teacher	Asst. Teacher	Home Visitor	Family Child Care Provider
Baseline Wage ($)	$28.35	$19.02	$18.53	$22.56	$23.96
Hours Per Staff	1,680	2,080	1,680	2,080	2,080
Staff Count	33,098	29,263	34,728	6,051	1,854
Baseline Expenditure ($M)	$1,576	$1,158	$1,081	$284	$92
Parity Wage Target	$31.11	$25.56	$19.87	$28.66	$24.24
Parity Expenditure	$1,730	$1,556	$1,159	$361	$94
Expenditure Increase	$153	$398	$78	$77	$1

Disaggregation of Wage-Parity Policy Implementation Costs

While estimates in this analysis are performed at the national level, the cost of implementing the wage policies will likely not be borne equally by each program. Programmatic data suggests Head Start programs vary in their current compensation practices and therefore will likely have varying costs associated with implementing the wage parity policy. Head Start data shows that wages and enrollment are not distributed evenly across various program types. Furthermore, some programs across the country are experiencing a workforce shortage and are in varying stages of implementing changes to address issues related to lack of qualified and available staff to fill classrooms and associated under-enrollment.

Data from 2019 PIR shows that programs located in school systems pay classroom teachers at the highest rate, on average. Grant recipients in school districts also have more programs that are fully enrolled compared to other agencies. Meanwhile, grant recipients that are Community Action Agencies are, on average, the lowest paying agency type and pay more than $10,000 less annually to classroom teachers, on average, compared to school systems.

Finally, ACF published sub-regulatory guidance to encourage Head Start programs to increase staff and teacher wages. Some Head Start programs have responded to this guidance by requesting to reduce their funded enrollment in order to increase staff wages, but those programs are in varying stages of implementing these changes.

Given this information, we expect that the cost of implementing these proposed policies will vary depending on a variety of factors, such as agency type. For instance, programs in school systems that already compensate at a higher level, will likely incur lower costs when implementing the wage policies in this proposal compared to programs in Community Action Agencies that, on average, tend to provide lower compensation. The costs of implementing these proposed policies will likely further vary based on the local wage targets used for each program, the distribution of qualifications for existing staff, and the degree to which each program has already made efforts to improve compensation.

The national estimates provided in this analysis cannot necessarily be applied at the individual program level. For instance, the hourly wage targets described in the previous section (Table C2) represent national averages and targets for individual programs will vary based on salaries for preschool teachers in their community. Program-level wage targets will vary based on factors such as local compensation rates and cost of living. Depending on the existing compensation structure in each program, some programs will have to increase their hourly wages substantially, and others may only need to make small increases. Program-level costs for implementing this policy are expected to be impacted by a variety of factors such as local pay compensation rates, education/credential levels of program staff, and the degree to which programs have already attempted to increase wages.

HHS acknowledges that a limitation of using national level estimates is that these program-level nuances are not specifically illustrated in the analysis. However, using national averages to estimate costs at the national level accounts, in some ways but not others, for program-level variation.

Impact of the Minimum Pay Requirement

The proposed rule would require that all staff receive, at minimum, a salary that is sufficient to cover basic costs of living in their geographic area, including those at the lowest end of the pay structure. We anticipate that Head Start programs in low-income areas would spend additional resources to fulfill the basic cost-of-living requirement. We assume that the incremental impact of this provision is approximately $116 million per year, which accounts for $88 million through hourly wage increases, and $28 million in corresponding increases in non-wage benefits. This estimate is consistent with about 15% of all Head Start staff, about 35,000 staff members in the baseline, each working an average of 30 hours per week for 42 weeks, receiving an additional $2.00 [268] per hour in wages to meet the goal of establishing a minimum hourly wage of $15.00, or a total average increase in hourly compensation of $2.63.

Impact on Expenditures Through Wage Compression

In addition to the direct impacts on teachers, assistant teachers, home visitors, and family child care providers, we anticipate that the proposed rule would result in increased compensation for family service workers as well as other non-education staff positions to address wage compression and wage equity issues that would arise. For example, proposed wage increases to lead teachers may far exceed what a similarly credentialed family service worker makes in a program and those programs would need to plan for compensation increases for such staff to avoid a significant wage gap between those positions. As another example, with rising wages for education staff, other staff in supervisory or mid-management roles would likely receive wage increases as well (*e.g.,* coaches, education managers, etc.). To account for this impact, we assume that the total impacts on expenditures associated with wages would be 10% higher than the sum of the impacts associated with wage targets and the minimum pay requirement. We seek comment on whether 10% is an appropriate adjustment to estimate expenses that programs will incur to avoid wage compression.

Overall Impacts of Wage Parity on Expenditures, Holding Benefits Constant

Next, we report the total expenditures, including the impacts of the wage targets, minimum pay requirement, and impacts associated with wage compression. Table C3 reports the net impacts on expenditures, holding benefits constant. The ''wage targets'' row is equal to the totals of the ''expenditure increase'' rows contained in Tables C1 and C2. When pay parity is fully implemented, the wages policies would result in about $875 million in additional annual expenditures on wages.[269] Note that these estimates are reported in constant 2023 dollars.

Table C3. Total Expenditures on Wages to Fund Wage Policies (Millions of Constant 2023 Dollars)

Scenario	Baseline
Wage Targets	$707
Minimum Pay	$88
Subtotal	$795
Wage Compression	$80
Total	$875

The estimates in Table C3 reflect the expenditures needed to fully implement pay parity, which would occur in 2030 under the NPRM, if finalized. Table C4 reports the expenditures by year under the implementation schedule, reported in constant 2023 dollars and also nominal dollars.

[268] In the absence of data from Head Start programs that reports the wages paid to the lowest paid staff, this estimate assumes that all of the 35,000 staff earned minimum wage in their State in 2022, which is consistent with an average hourly wage of $10.68. The estimate of average minimum wage was calculated using the minimum wage for each State (*https://www.dol.gov/agencies/whd/mw-consolidated*) and the number of Head Start staff in each State according to administrative data from the Office of Head Start in 2022. For those staff where minimum wage data were not available due to lack of data for the U.S. Territory or data entry error, the Federal minimum wage of $7.25 was used. In the baseline analysis, we assume that all staff receive a pay increase, to $13.00 per hour, due to the projected reductions in funded enrollment from FY2022 to FY2023, and the associated reduction in staff and increased share of personnel funds. These staff would therefore need an additional $2.00 per hour to meet the $15 per hour minimum pay policy goal.

[269] The additional annual expenditures on fringe associated with the wage policies (*i.e.,* the fringe associated with the increased wages in the wage policies at the baseline fringe rate of 24%), are included in the estimates reported in Table C6 in the benefits section.

Table C4. Total Additional Expenditures on Wages by Year to Fund Wage Policies, Millions of Dollars

Year	Policy Phase-In	Constant 2023 Dollars	Nominal Dollars
2023	0%	$0	$0
2024	5%	$44	$45
2025	10%	$87	$92
2026	25%	$219	$234
2027	40%	$350	$383
2028	60%	$525	$588
2029	80%	$700	$802
2030	100%	$875	$1,026
2031	100%	$875	$1,049
2032	100%	$875	$1,073
2033	100%	$875	$1,098

Expenditures Associated With Fringe Benefits

As discussed above, based on an analysis of current Head Start programs, about 24% of total personnel costs go towards fringe benefits, rather than wage compensation. Table B1 reports personnel costs of about $8.7 billion in 2023. Of this figure, 76% goes to wage compensation, or about $6.6 billion, and 24% goes to fringe benefits, or about $2.1 billion. We assume that this ratio will remain constant over time, absent the staff benefits provisions of the proposed rule.

The proposed rule outlines requirements for grant recipients to provide benefits to staff, discussing health insurance, paid sick leave, vacation or personal leave, paid family leave, short term mental health services, and other considerations. In our alternative policy scenario, discussed further in Section K, grant recipients would also be required to provide retirement benefits to staff. For the purposes of this analysis, we assume that these enhancements would increase the share of total personnel costs that go towards fringe benefits from 24% to 27.8%, or to 32.5% in the alternative policy scenario, holding wages compensation constant. Absent all other provisions in the NPRM, adopting the benefits policy at baseline wages would increase fringe benefits in constant 2023 dollars from $2.1 billion to about $2.5 billion, and total compensation from about $8.7 billion to $9.2 billion, for an increase of about $458 million.[270] In nominal dollars, these impacts would increase with the Head Start COLA, or 2.3% per year.

Table C5 reports the impacts of the benefit policy over time, accounting for the yearly impact of the wage policies reported in Table C4, reported in constant and nominal dollars. These tables report the changes to benefits, some of which are driven by wage increases of the wage policies.

Table C5. Total Additional Expenditures by Year on Benefits, Millions of Dollars

Year	Policy Phase-In	Constant 2023 Dollars	Nominal Dollars
2023	24.0%	$0	$0
2024	24.0%	$14	$14
2025	24.0%	$28	$29
2026	27.8%	$542	$580
2027	27.8%	$593	$649
2028	27.8%	$660	$739
2029	27.8%	$727	$834
2030	27.8%	$795	$932
2031	27.8%	$795	$953
2032	27.8%	$795	$975
2033	27.8%	$795	$998

[270] Under the Required Retirement Scenario and absent all other provisions in the NPRM, adopting the benefits policy at baseline wages would increase fringe benefits in constant 2023 dollars from $2.1 billion to about $3.2 billion, and total compensation from about $8.7 billion to $9.8 billion, for an increase of about $1.1 billion.

Disaggregation of Fringe Benefit Estimates

To estimate the cost associated with each category of benefits in the proposed rule, we refer to the distribution of benefits provided to teachers,[271] who have an overall fringe rate of 32.5% according to data on employer costs for employee compensation released by BLS in December 2022.[272] There are more categories of benefits provided to teachers described by the BLS than will be required under the proposed rule, specifically retirement benefits are provided to teachers in the BLS data. In order to estimate the expenditures on the major benefits categories that will be required under the proposed rule, we first estimate the cost of Head Start teachers receiving the same fringe rate and major benefits categories (32.5%: health insurance, retirement, and paid leave). We then calculate the associated reduction in fringe associated with removing the retirement benefit in order to estimate the cost of the benefits policy under the proposed rule.

We tentatively apply the same distribution of fringe associated with each fringe category to the estimated expenditure on benefits for Head Start using the same overall fringe rate of 32.5%, which represents an increase of 8.5% from the current fringe rate. We then calculate the increased expenditure needed for each of the major benefits categories: health insurance, retirement, and paid leave, compared to existing expenditures in each category for Head Start programs.[273] This approach estimates that of the total projected cost associated with increasing the fringe rate from 24.0% to 32.5%, 16.6% will be accounted for by increased spending on health insurance. Increased spending on retirement will account for 54.7% of the total projected cost, and increased spending on paid leave will account for 28.7% of the total projected cost. Thus, of the total increase of 8.5% in fringe, we anticipate about 1.4% of this increase will go towards health insurance, 4.7% of this increase will go towards retirement benefits, and 2.4% will go towards paid leave.

As retirement benefits are only proposed to be required under the alternative policy scenario, we reduce the estimated increase on fringe by the increase associated with retirement benefits, 4.7%, for a target fringe rate of 27.8% under the benefits policy in the proposed rule. Under the proposed rule, increased spending on health insurance will account for 37% of the total cost of the benefits policy, and increased spending on paid leave will account for the remaining 63% of the total cost of the benefits policy.

Table C6 reports an expenditure breakdown for each major category of benefits that would be impacted by the proposed rule.

Table C6. Additional Expenditure Breakdown by Benefit Policy, Millions of Nominal Dollars

Year	Total Benefits Expenditures[1, 2]	Benefits Policy Total	Benefits Policy: Paid Leave	Benefits Policy: Health Insurance	Fringe Associated with Wage Policy[3]
2024	$14	$0	$0	$0	$14
2025	$29	$0	$0	$0	$29
2026	$580	$506	$319	$187	$74
2027	$649	$528	$333	$195	$121
2028	$739	$554	$349	$205	$186
2029	$834	$580	$366	$215	$253
2030	$932	$608	$383	$225	$324
2031	$953	$622	$392	$230	$331
2032	$975	$636	$401	$235	$339
2033	$998	$651	$410	$241	$347

[1] Only benefits expenditures associated with baseline staff are shown here. Benefits expenditures associated with hiring additional staff under other policies in the proposed rule (e.g., additional Family Service Workers hired under the Family Service Worker Family Assignments policy) are included in the estimates for each specific policy.
[2] These estimates are calculated using the wages estimated under the proposed wage policy.
[3] This cost represents the additional benefits expenditures associated with increased wages under the wage policy at the baseline fringe rate of 24%.

We identify several significant caveats to this analysis. First, because many existing Head Start grant recipients provide health insurance, the growth in costs for expanded health insurance may be smaller than projected. We do expect that there will be improvements in the quality of health plans and what employees are covered, and increases in the provision of life and disability insurance, which may increase overall insurance costs for some grant recipients, but it is likely not to increase linearly with wage increases. Further, some grant recipients may choose to encourage staff to enroll in plans available in the Marketplace because the quality and expenses of health insurance in the Marketplace may be better than what they can obtain as an employer, and therefore the proportion of fringe spent on insurance for those grant recipients would decrease. Second, legally required fringe components such as Social Security taxes and retirement and savings fringe are not necessarily comparable between the reference group of teachers included in the BLS data and Head Start staff. Many elementary teachers are State

[271] This occupational group was chosen because the total fringe rate aligns with internal estimates of the total fringe rate that would be associated with the proposed benefit policies. The occupational group includes postsecondary teachers; primary, secondary, and special education teachers; and other teachers and instructors.

[272] *https://www.bls.gov/news.release/archives/ecec_03172023.pdf.*

[273] Estimates based on average fringe for each category of benefits calculated from a sample of Head Start program budgets.

employees and not all State employees are covered by Social Security because they are covered by State pension plans; as a result, legally required fringe may be lower and retirement fringe higher for teachers relative to a comparable benefits package for Head Start staff.

Discussion of Uncertainty

We have attempted to provide our best estimates of the potential effects of the staff wages and staff benefit provisions. We acknowledge several significant and unresolved sources of uncertainty. First, we note that these estimates use a single baseline, which is a limitation of this analysis. We have provided estimates using a single baseline that assumes a stable funded enrollment level consistent with projected FY2023 funded enrollment of 755,074. If funded enrollment were to increase, which would require Congressional investment designated for expansion (and such increase occurs for reasons separate from this regulatory proposal), the impacts of this proposed rule would be underestimated. If funded enrollment were to decrease, particularly if it were to decrease below the level of our current actual enrollment of 650,000, then the impacts of this proposed rule would be overestimated. Furthermore, if other baseline assumptions were to vary, such as the child-to-staff ratio or the share of appropriations allocated to personnel costs, that would also impact the estimated effects. However, absent guiding data for the timing and magnitude of these possible variations, OHS presents estimates using the single, data-informed baseline.

Second, we followed a partial equilibrium modeling approach, focusing the primary scope of our analysis on the impacts to Head Start. General equilibrium modeling could potentially explore the impacts of the proposed rule on wages beyond Head Start staff. These effects could be informative for the estimates on expenditures, since wage increases experienced by Head Start staff could result in wage increases to other occupations that draw from a similar supply of workers, such as Kindergarten teachers. It is possible to anticipate a gradual feedback effect between Head Start staff and occupations that provide reference wages under the wage-parity policy. If this is the case, this would tend to indicate that our expenditure estimates are underestimated.

Third, the analysis assumes that average compensation for Head Start staff (in the baseline scenario) and preschool teachers in public school settings (in the baseline scenario and under the NPRM) increases with inflation, or equivalently, that their average compensation remains constant in real terms, over the time horizon of this analysis. If compensation for preschool teachers in public school settings grows more slowly over time than compensation for Head Start staff, this would tend to indicate that our expenditure estimates are overestimated. Alternatively, if compensation for preschool teachers in public school settings grows faster than compensation for Head Start staff, this would tend to indicate that our expenditure estimates are underestimated.

In regard to the inherent uncertainty over the availability of funding to fully implement this proposed rule, if finalized, Section J presents a sensitivity analysis on that significant source of uncertainty.

D. Workforce Supports: Staff Wellness—Staff Breaks

The proposed rule outlines requirements for programs to provide break times during work shifts. Specifically, for each staff member working a shift lasting between four and six hours, programs would be required to provide a minimum of one 15-minute break per shift; and for each staff member working a shift lasting six hours or more, programs would be required to provide a minimum of one 30-minute break per shift.

The scope of this element of the proposed rule covers approximately 104,995 education staff, the estimate of education staff that is proportionally decreased to reflect the reduced enrollment in 2023 compared to 2022. We assume that 13% of education staff typically work shifts lasting between four and six hours, and that 87% of education staff typically work shifts lasting 6 hours or more. Thus, across all staff, the proposed rule would require an average break time of about 28 minutes per shift.[274] We assume 180 average shifts per year for each education staff, for a total of 5,049 minutes of break time per year per staff.[275] For 104,995 total education staff, the proposed rule would require a minimum of about 8.8 million hours of break time per year.[276] We do not have detailed information from Head Start programs on their current policies for staff breaks. For the purposes of this analysis, we adopt the following assumptions:

(1) Under the baseline scenario of no regulatory action, 20% of Head Start programs offer break time for education staff.

(2) Under the proposed rule, 50% of Head Start programs would shift the workloads of existing Head Start staff to provide coverage during the additional breaks.

(3) Under the proposed rule, Head Start programs who do not already provide breaks and cannot shift workloads of existing staff would provide coverage during the additional breaks by hiring 'floaters.'

(4) On average, Head Start programs would pay the 'floaters' hourly wages in line with assistant teachers with no credential.

In line with assumptions 1 and 2, we adjust the 8.8 million hours estimate downwards by 70% and estimate that the proposed rule would result in about 2.7 million hours of additional breaks for educational staff. Using the wage target for assistant teachers of $16.41 per hour under the wage-parity target, this policy would result in additional expenditures of about $57 million per year, or $60 million when also accounting for the benefits policy.[277] This policy would take effect in 2027, and the total expenditures would increase in line with the wages under the wage-parity policy. Table D1 reports the expenditures needed to fund this policy, in constant and nominal dollars. Table D2 reports the additional value-of-time costs by year for those programs who provide breaks by shifting existing workloads, in constant and nominal dollars. Both Table D1 and Table D2 reflect the policy cost using the benefits fringe rate in the proposed benefits policy.

[274] 13% * 15 + 87% * 30 = 28.05.

[275] 2,805 * 180 = 5,049.

[276] 5,049 * 104,995/60 = 8,835,310.

[277] Under the Required Retirement Scenario, the Breaks policy would cost $64 million in Constant 2023 dollars.

Table D1. Expenditures by Year to Fund Staff Breaks Policy, Millions of Dollars

Year	Constant 2023 Dollars	Nominal Dollars
2023	$0	$0
2024	$0	$0
2025	$0	$0
2026	$0	$0
2027	$60	$66
2028	$60	$67
2029	$60	$69
2030	$60	$71
2031	$60	$72
2032	$60	$74
2033	$60	$76

Table D2. Additional Value-of-Time Costs by Year for Staff Breaks Policy, Millions of Dollars

Year	Constant 2023 Dollars	Nominal Dollars
2023	$0	$0
2024	$0	$0
2025	$0	$0
2026	$0	$0
2027	$100	$110
2028	$100	$112
2029	$100	$115
2030	$100	$118
2031	$100	$120
2032	$100	$123
2033	$100	$126

E. Family Service Worker Family Assignments

The proposed rule would ensure the planned number of families assigned to work with individual family services staff is no greater than 40, unless a program can demonstrate higher family assignments provide high quality family and community engagement services and maintain reasonable staff workload. 2019 PIR data reveals that approximately 50 percent of programs have staff family assignments that are 40 families or less. Across all programs with ratios of families per family services staff that exceed 40, we estimate that Head Start programs would need to hire an additional 3,231 family service workers to meet this requirement at the funded enrollment level projected for FY2023, compared to the baseline scenario. This estimate includes an assumption that 10% of programs will exceed a caseload of 40,[278] as is allowable under the proposed policy.

We adopt an estimate of $40,000 in wage compensation per year per family service worker, which results in a $52,631 total compensation in the baseline scenario or $55,401 total compensation under the benefit policy.[279] For 3,231 workers, this would result in additional expenditures across Head Start programs of $179,002,770. This policy would begin to take effect in 2027. Table E1 reports the expenditures needed to fund this policy, in constant and nominal dollars.

[278] For the purposes of this estimation we assume that all of the programs that exceed the threshold have an average caseload of 60.

[279] Under the Required Retirement Scenario total compensation for each additional family service worker would be $59,259 in constant 2023 dollars.

Table E1. Expenditures by Year to Fund Family Service Worker Policy, Millions of Dollars

Year	Constant 2023 Dollars	Nominal Dollars
2023	$0	$0
2024	$0	$0
2025	$0	$0
2026	$0	$0
2027	$179	$196
2028	$179	$201
2029	$179	$205
2030	$179	$210
2031	$179	$215
2032	$179	$220
2033	$179	$225

F. Mental Health Services

The proposed rule would enhance requirements for mental health supports to integrate mental health more fully into every aspect of program services as well as elevate the role of mental health consultation to support the wellbeing of children, families, and staff. We anticipate that this element of the proposed rule would result in additional work for a variety of program staff, which we estimate will add up to together to be roughly equivalent to one full-time employee (FTE) per Head Start agency. We estimate 1,564 agencies needing the additional FTE to comply with the proposed policy.

We adopt an estimate of $60,000 in wage compensation per year per FTE which represents an average of the various salaries of the staff members who we assume will complete the additional work. In addition to wage compensation, we assume that fringe benefits will be associated with the additional FTE, or about $18,947 under the baseline assumptions for benefits, or $23,102 under the benefit policy. In total, under the proposed rule, we estimate that each additional FTE would require $78,947 in total compensation in years prior to the effective date of the benefits policy, and $83,102 in total compensation in all future years. For 1,564 FTEs, this would result in additional expenditures across Head Start programs of $129,972,299.[280] We assume that these impacts would begin immediately. Table F1 reports the expenditures needed to fund this policy, in constant and nominal dollars.

Table F1. Expenditures by Year to Fund Mental Health Services Policy, Millions of Dollars

Year	Constant 2023 Dollars	Nominal Dollars
2023	$0	$0
2024	$123	$126
2025	$123	$129
2026	$130	$139
2027	$130	$142
2028	$130	$146
2029	$130	$149
2030	$130	$152
2031	$130	$156
2032	$130	$159
2033	$130	$163

[280] Under the Required Retirement Scenario, the fringe associated with each additional FTE is estimated to be $28,889 for a total compensation of $88,889. The total policy cost for the mental health policy under the Robust Benefit Scenario is $139 million.

G. Preventing and Addressing Lead Exposure

The proposed rule includes new requirements on preventing and addressing lead exposure through water and lead-based paint in Head Start facilities. This analysis presents estimates of the costs associated with testing and remediating water fixtures, and costs associated with evaluating and reducing the hazards from lead paint in classrooms and common areas at Head Start facilities.

Lead in Water

To assess the likely magnitude of the costs associated with the lead in water requirement, we first adopt estimates of 19,400 service locations, with an average of 7.5 water fixtures per service location, for 145,500 total fixtures. We assume that half of these fixtures would be tested annually, and half of these fixtures would be tested once every 5 years. Thus, in a given year, about 60% of the total fixtures, or 87,300 fixtures, would be tested per year. We adopt an estimate of $100 per fixture tested, for an annual cost associated with testing of $8,730,000. In addition to these testing costs, we assume that 25% of fixtures, or 35,375 fixtures, will require ongoing remediation using point-of-use devices. We identify filter replacements as largest cost associated with remediation, and adopt an estimate of $30 per filter, with filters replaced quarterly, or a cost per fixture of $120 per year. Across 35,375 fixtures requiring ongoing remediation, we calculate an annual cost of $4,365,000 for remediation. In total, we estimate $13,095,000 per year in annual costs associated with testing and remediating water fixtures. Some of this cost can be covered by Federal funding under the Bipartisan Infrastructure Law (as enacted by the Infrastructure Investment and Jobs Act); many states are already using this funding.

Lead-Based Paint

To assess the likely magnitude of the costs associated with the lead-based paint requirement, we first adopt estimates of 25,409 total rooms across Head Start facilities, consisting of 19,500 classrooms and 5,909 common areas. We assume that about 46% Head Start facilities were constructed prior to 1978 and would require a lead-hazard evaluation under the proposed rule. Thus, about 11,688 rooms would require evaluation. We adopt an estimate of $700 per room for the evaluations, which would consist of a lead-based paint inspection and risk assessment. Across all rooms requiring evaluation, we estimate an initial total cost associated with evaluations of about $8.2 million.

Of rooms undergoing an evaluation, we assume that 43.8% of rooms would be identified as potentially having a lead-based paint hazard requiring abatement.[281] [282] Thus, after the first round of assessments covering 11,688 rooms, we estimate that 5,125 rooms would require abatement. We assume that half of the rooms requiring abatement would require interior paint repair, with a per-room cost of $710; that half of the rooms would require friction/impact work, with a per-room cost of $280; and assume that that all rooms undergoing abatement would incur costs associated with unit cleanup of $430 per room and costs associated with clearance of $170 per room. In total, we estimate an average cost of abatement of $1,095 per room. Across all 5,125 rooms requiring abatement following the first round of assessments, this would be about $5.6 million.

The proposed rule outlines a process for subsequent assessments for rooms requiring abatement. These reassessments occur at least once every 2 years unless two reassessments conducted two years apart identify no lead-based paint hazards. To model assessments in future years, we assume that 21.9% of all rooms that are reassessed will require abatement, which is half the rate of abatement compared to initial assessments. Thus, for the 5,125 rooms that required abatement, we estimate that 1,124 would require additional abatement. The other 4,001 rooms would still require a second reassessment. Table G1 reports the number of assessments and abatements by year, the costs of those assessments and abatements, and the yearly costs of the lead-based paint policy.

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Table G1. Cost of Lead-Based Paint Policy

Year	Reassessments	Final Assessments	Abatements	Cost of Evaluations	Cost of Abatements	Cost of Lead-Based Paint Policy
2024	0	11,688	5,125	$8,181,727	$5,611,883	$13,793,611
2025	0	0	0	$0	$0	$0
2026	5,125	0	1,124	$3,587,505	$1,230,343	$4,817,848
2027	0	0	0	$0	$0	$0
2028	1,124	4,001	1,124	$3,587,505	$1,230,343	$4,817,848
2029	0	0	0	$0	$0	$0
2030	1,124	877	439	$1,400,605	$480,341	$1,880,946
2031	0	0	0	$0	$0	$0
2032	439	877	289	$921,152	$315,911	$1,237,063
2033	0	0	0	$0	$0	$0

[281] *https://www.hud.gov/sites/dfiles/HH/documents/AHHS_II_Lead_Findings_Report_Final_29oct21.pdf.*

[282] We note that the First National Environmental Health Survey of Child Care Centers published by HUD in 2003, found that child care centers were significantly less likely to have lead-based hazards than residences. As such, cost of the proposed rule may be overestimated.

Table G2 reports the yearly costs associated with the lead in water policy, the lead-based paint policy, and the total cost associated with the two lead policies in constant and nominal dollars.

Table G2. Total Cost of Lead Policies (in Millions)

Year	Cost of Lead in Water Policy	Cost of Lead-Based Paint Policy	Total Cost, Constant $	Total Cost, Nominal $
2024	$13.1	$13.8	$26.9	$27.5
2025	$13.1	$0.0	$13.1	$13.7
2026	$13.1	$4.8	$17.9	$19.2
2027	$13.1	$0.0	$13.1	$14.3
2028	$13.1	$4.8	$17.9	$20.1
2029	$13.1	$0.0	$13.1	$15.0
2030	$13.1	$1.9	$15.0	$17.6
2031	$13.1	$0.0	$13.1	$15.7
2032	$13.1	$1.2	$14.3	$17.6
2033	$13.1	$0.0	$13.1	$16.4

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H. Administrative Costs

Several of the provisions of the NPRM would likely entail additional administrative costs beyond those that we have otherwise quantified in this analysis. For example, we anticipate that programs would expend resources to develop program-specific policies while preparing to implement the workforce wage and benefits provisions. To account for these impacts, we adopt an assumption that each Head Start program would spend a total of 600 hours per program, spread across directors, education managers, disability managers, health managers, and other management staff to develop program-specific policies. To value the time spent on these activities, we adopt a fully loaded hourly wage of $60 per hour, reflecting a mix of wages across several roles. We assume that this impact would primarily occur in the first year of the time horizon of our analysis, before most of the impacts associated with wage and benefits policies take effect, and thus we do not adjust these upwards to account for other provisions of the proposed rule. For each program, we value this impact at $36,000.[283] Across 3,000 programs, we estimate the total impact as $108 million, all occurring in 2024.[284] We request comment on whether 600 hours is a reasonable assumption for each program to review, understand, and plan for implementation for these proposed changes to the standards.

[283] $36,000 = 600 hours * $60/hour.

[284] $108,000,000 = $36,000/program * 3,000 programs. Head Start funding is only used for a portion of the salaries of these management positions.

I. Timing of Impacts

The proposed rule includes an implementation timeline for several of the provisions, described above. Table I1 summarizes the impacts on expenditures assuming a funded enrollment level consistent with the projected FY2023 funded enrollment, consistent with this implementation timeline, reporting yearly estimates, and present value and annualized values corresponding to 3% and 7% discount rates, with all monetary estimates reported in millions of constant 2023 dollars. Table I2 reports the same impacts except in nominal dollars.

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Table I1. Expenditures of the Proposed Rule, Baseline Scenario (Millions of Constant 2023 Dollars)

Year	Wage	Benefit	Breaks	Family Service Workers	Mental Health	Lead	Other	Total
2024	$44	$14	$0	$0	$123	$27	$108	$316
2025	$87	$28	$0	$0	$123	$13	$0	$252
2026	$219	$542	$0	$0	$130	$18	$0	$909
2027	$350	$593	$60	$179	$130	$13	$0	$1,325
2028	$525	$660	$60	$179	$130	$18	$0	$1,572
2029	$700	$727	$60	$179	$130	$13	$0	$1,809
2030	$875	$795	$60	$179	$130	$15	$0	$2,054
2031	$875	$795	$60	$179	$130	$13	$0	$2,052
2032	$875	$795	$60	$179	$130	$14	$0	$2,053
2033	$875	$795	$60	$179	$130	$13	$0	$2,052
PV, 3%	$4,398	$4,714	$343	$1,021	$1,096	$136	$105	$11,813
PV, 7%	$3,377	$3,680	$265	$787	$901	$114	$101	$9,226
Annualized, 3%	$516	$553	$40	$120	$129	$16	$12	$1,385
Annualized, 7%	$481	$524	$38	$112	$128	$16	$14	$1,314

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All estimates reported above are impacts compared to our baseline budget scenario described reported in Table B1. Further, we calculate the cost per child, in 2030, when the rule is fully implemented, using 2023 funded enrollment levels to be $21,797 (nominal dollars). As discussed previously, we recognize that projected FY2023 funded enrollment greatly exceeds estimated FY2023 actual enrollment. If programs were to fully implement the proposed policies and maintain funded enrollment at least consistent with FY2023 actual enrollment (*i.e.,* 650,000), they would not need additional appropriations beyond the baseline budget scenario until 2030, when they would need an additional $118 million. In 2031, programs would again need an additional $118 million, $122 million in 2032, and additional $124 million in 2033 above the baseline budget scenario funding levels to fully implement the proposed policies and maintain a funded enrollment level consistent with estimated FY2023 actual enrollment.

J. Sensitivity Analysis—Potential Enrollment Reductions

In the previous analysis, we framed results as the Federal appropriations increase needed to fully fund these requirements and maintain current funded enrollment of 755,074.

However, in the interest of transparency, we perform a sensitivity analysis to evaluate the impacts of the proposed rule under a scenario of no additional funding above the baseline budget scenario in Table B1 (or increased appropriations that cannot be used to support this regulatory proposal and/or are not increased in response to it). Under this scenario, Head Start programs would likely comply with the proposed rule by reducing the size of their funded enrollment, which would also result in a reduced workforce at Head Start programs.

To calculate the number of slots at Head Start programs under this last scenario, we multiply the total number of slots under the full-funding scenario by the share of funding available compared to full funding. For example, we estimate that $15.2 billion would be necessary to fully implement the proposed rule in 2033 and maintain funded enrollment consistent with the estimated FY2023 actual enrollment of 650,000. Under our baseline budget scenario, $15.0 billion would be available, which is about 99% of the funding needed. Thus, we estimate 644,374 slots would be available, which is 99% of enrollment at the estimated FY2023 actual enrollment level, or a % change in slots of −1%.

Table J1 reports the change in total slots [285] over time that would be necessary to implement the proposed rule compared to both projected FY2023 funded enrollment and estimated FY2023 actual enrollment, absent an increase in Federal appropriations. We estimate that programs can approach full implementation of the policies in the proposed rule without additional appropriations by aligning their funded enrollment levels with their actual enrollment. Only a small reduction in slots from estimated FY2023 actual enrollment, 1%, would be needed to reach full implementation of the policies in the proposed rule. Specifically, programs would need to reduce funded enrollment from the projected FY2023 funded enrollment of 755,074 by 15%, to a funded enrollment of 644,605 in 2030, which reflects a 1% reduction from estimated FY2023 actual enrollment of 650,000.[286] All monetary estimates are reported in nominal dollars.

[285] For this analysis, we assume that staffing reductions occur at the same rate as slot reductions.

[286] We note that reductions in funded enrollment in response to the proposed rule will require some shifting of transfer of funds from existing expenditures, such as those to support funded slots that are currently empty or spending to recruit and train staff in a high turnover environment. Please see our request for comment on this point in Section B and the discussion under the heading ''Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects.''

Table J1. Slot Loss under Baseline Head Start Budget Scenario (Millions of Nominal Dollars)

Year	Funding under Baseline Budget Scenario	Slots Funded by Baseline Budget under Proposed Rule	% Change in Slots from 2023 Funded Enrollment	% Decline in Slots from 2023 Actual Enrollment*
2024	$12,264	735,687	-3%	--
2025	$12,541	739,542	-2%	--
2026	$12,829	701,854	-7%	--
2027	$13,124	679,906	-10%	--
2028	$13,426	667,511	-12%	--
2029	$13,735	656,017	-13%	--
2030	$14,051	644,605	-15%	-1%
2031	$14,374	644,692	-15%	-1%
2032	$14,704	644,635	-15%	-1%
2033	$15,043	644,692	-15%	-1%

* We note that reductions in funded enrollment in response to the proposed rule will require some degree of shifting of funds from existing expenditures, such as those to support funded slots that are currently empty or spending to recruit and train staff in a high turnover environment. Please see our request for comment on this point in Section B and the discussion under the heading "Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects."

K. Alternative Policy Scenario: Required Retirement

The proposed rule outlines requirements for grant recipients to provide benefits to staff, discussing health insurance, paid leave, access to short-term free or low-cost mental health services, and other considerations. The proposed rule requests comment on whether grant recipients should also be required to provide retirement savings plans as part of their benefits.

In this section, we describe the alternative policy scenario, the *Required Retirement Scenario,* in which the proposed benefits policy includes a requirement that grant recipients also provide retirement benefits to staff. We analyze this scenario to identify the most consequential impacts that would likely occur under the Required Retirement Scenario, should it be included in a finalized rule.

We base this analysis on the same methodology described in Section C: Disaggregation of Fringe Benefit Estimates. Based on the data on employer costs for employee compensation released by the U.S. Bureau of Labor Statistics in December 2022, teachers have an overall fringe rate of 32.5%, which is inclusive of health insurance, paid leave, retirement, and other benefits. As such, we assume an overall fringe rate of 32.5% under the Required Retirement Scenario, which is inclusive of fringe associated with all three major benefits policies included in the policy: health insurance, paid leave, and retirement. The disaggregation of these costs is described in Section C: Disaggregation of Fringe Benefit Estimates.

Table K1 reports the impacts of the robust benefit policy over time, accounting for the yearly impact of the wage policies reported in Table C5, reported in constant and nominal dollars. These tables report the changes to benefits, some of which are driven by wage increases of the wage policies. Table K2 reports a breakdown of increased expenditure for each major category of benefits that would be impacted by the proposed rule under the Required Retirement Scenario.

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Table K1. Total Additional Expenditures on Benefits by Year, Millions of Constant and Nominal Dollars

Year	Policy Phase-In	Constant 2023 Dollars	Nominal Dollars
2023	24.0%	$0	$0
2024	24.0%	$14	$14
2025	24.0%	$28	$29
2026	32.5%	$1,201	$1,286
2027	32.5%	$1,264	$1,384
2028	32.5%	$1,348	$1,511
2029	32.5%	$1,432	$1,642
2030	32.5%	$1,517	$1,778
2031	32.5%	$1,517	$1,819
2032	32.5%	$1,517	$1,861
2033	32.5%	$1,517	$1,904

Table K2. Additional Expenditure Breakdown by Benefit Policy, Millions of Nominal Dollars

Year	Total Benefits Expenditures[1,2]	Benefits Policy Total	Benefits Policy: Paid Leave	Benefits Policy: Health Insurance	Benefits Policy: Retirement	Fringe Associated with Wage Policy[3]
2024	$14	$0	$0	$0	$0	$14
2025	$29	$0	$0	$0	$0	$29
2026	$1,286	$1,212	$348	$201	$663	$74
2027	$1,384	$1,263	$363	$210	$692	$121
2028	$1,511	$1,325	$380	$220	$725	$186
2029	$1,642	$1,389	$399	$231	$760	$253
2030	$1,778	$1,455	$417	$241	$796	$324
2031	$1,819	$1,488	$427	$247	$815	$331
2032	$1,861	$1,522	$437	$253	$833	$339
2033	$1,904	$1,557	$447	$258	$853	$347

Note that the estimates for paid leave and health insurance shown here differ slightly from those in Table C7 due to the influence of rounding during the estimation process.

[1] Only benefits expenditures associated with baseline staff are shown here. Benefits expenditures associated with hiring additional staff under other policies in the proposed rule (e.g., additional Family Service Workers hired under the Family Service Worker Family Assignments policy) are included in the estimates for each specific policy.

[2] These estimates are calculated using the wages estimated under the proposed wage policy.

[3] This cost represents the additional benefits expenditures associated with increased wages under the wage policy at the baseline fringe rate of 24%.

The inclusion of retirement benefits under the Required Retirement Scenario impacts the cost estimates for other policies that required increased expenditures on compensation, such as the family service worker and mental health policies. Table K3 summarizes the impacts on expenditures for the Required Retirement Scenario, consistent with the implementation timelines described in the proposed rule, reporting yearly estimates and present value and annualized values corresponding to 3% and 7% discount rates, all with monetary estimates reported in millions of constant 2023 dollars. Table K4 reports the same impacts for the Required Retirement Scenario in nominal dollars.

Table K3. Expenditures of the Proposed Rule, Required Retirement Scenario (Millions of Constant 2023 Dollars)

Year	Wage	Benefit	Breaks	Family Service Workers	Mental Health	Lead	Other	Total
2024	$44	$14	$0	$0	$123	$27	$108	$316
2025	$87	$28	$0	$0	$123	$13	$0	$252
2026	$219	$1,201	$0	$0	$139	$18	$0	$1,576
2027	$350	$1,264	$64	$191	$139	$13	$0	$2,022
2028	$525	$1,348	$64	$191	$139	$18	$0	$2,286
2029	$700	$1,432	$64	$191	$139	$13	$0	$2,540
2030	$875	$1,517	$64	$191	$139	$15	$0	$2,801
2031	$875	$1,517	$64	$191	$139	$13	$0	$2,799
2032	$875	$1,517	$64	$191	$139	$14	$0	$2,801
2033	$875	$1,517	$64	$191	$139	$13	$0	$2,799
PV, 3%	$4,398	$9,346	$367	$1,092	$1,156	$136	$105	$16,599
PV, 7%	$3,377	$7,321	$283	$842	$948	$114	$101	$12,987
Annualized, 3%	$516	$1,096	$43	$128	$136	$16	$12	$1,946
Annualized, 7%	$481	$1,042	$40	$120	$135	$16	$14	$1,849

Table K4. Expenditures of the Proposed Rule, Required Retirement Scenario (Millions of Nominal Dollars)

Year	Wage	Benefit	Breaks	Family Service Workers	Mental Health	Lead	Other	Total
2024	$45	$14	$0	$0	$126	$28	$110	$323
2025	$92	$29	$0	$0	$129	$14	$0	$263
2026	$234	$1,286	$0	$0	$149	$19	$0	$1,688
2027	$383	$1,384	$71	$210	$152	$14	$0	$2,214
2028	$588	$1,511	$72	$215	$156	$20	$0	$2,561
2029	$802	$1,642	$74	$219	$159	$15	$0	$2,912
2030	$1,026	$1,778	$76	$225	$163	$18	$0	$3,285
2031	$1,049	$1,819	$77	$230	$167	$16	$0	$3,358
2032	$1,073	$1,861	$79	$235	$171	$18	$0	$3,437
2033	$1,098	$1,904	$81	$240	$175	$16	$0	$3,514
PV, 3%	$5,165	$10,851	$430	$1,278	$1,309	$152	$107	$19,292
PV, 7%	$3,950	$8,462	$331	$983	$1,066	$127	$103	$15,021
Annualized, 3%	$606	$1,272	$50	$150	$153	$18	$13	$2,262
Annualized, 7%	$562	$1,205	$47	$140	$152	$18	$15	$2,139

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All estimates reported above are impacts compared to our baseline budget scenario reported in Table B1. Further, we calculate the cost per child, in 2030, when the rule is fully implemented, using 2023 funded enrollment levels to be $22,958 (nominal dollars). As discussed previously we recognize that projected FY2023 funded enrollment greatly exceeds estimated FY2023 actual enrollment. If programs were to fully implement the proposed policies and maintain funded enrollment at least consistent with FY2023 actual enrollment (*i.e.,* 650,000), they would not need additional appropriations beyond the baseline budget scenario until 2027, when they would need an additional $80 million. In future years (all in nominal dollars), programs would need $336 million in 2028, $595 million in 2029, $872 million in 2030, $890 million in 2031, $912 million in 2032,

and $932 million in 2033 above the baseline budget funding scenario to implement the proposed policies and maintain a funded enrollment level consistent with estimated FY2023 actual enrollment.

We also replicate the sensitivity analysis described in Section J. In this analysis, we assume an alternative funding scenario in which no additional funding above the baseline budget scenario in Table B1 is available to enact the proposed rule under the Required Retirement Scenario (or increases in appropriations over time that cannot be used to support the proposed rule, if finalized, and/or are not increased in response to it). In this scenario, Head Start programs would likely comply with the proposed rule by reducing the size of their funded enrollment, which would also result in a reduced workforce at Head Start programs. We apply the same methodology used in Section J to this analysis. Table K5 reports the change in total slots that would be necessary to implement the proposed rule under the Required Retirement Scenario, absent a responsive increase in Federal appropriations.

Table K5. Slot Loss under Baseline Head Start Budget and Required Retirement Scenarios (Millions of Nominal Dollars)

Year	Funding under Baseline Budget Scenario	Slots Funded by Baseline Budget under Required Retirement Scenario	% Change in Slots from 2023 Funded Enrollment	% Difference in Slots from 2023 Actual Enrollment*
2024	$12,264	735,687	-3%	13%
2025	$12,541	739,542	-2%	14%
2026	$12,829	667,288	-12%	3%
2027	$13,124	646,063	-14%	-1%
2028	$13,426	634,110	-16%	-2%
2029	$13,735	623,005	-17%	-4%
2030	$14,051	612,004	-19%	-6%
2031	$14,374	612,082	-19%	-6%
2032	$14,704	612,031	-19%	-6%
2033	$15,043	612,082	-19%	-6%

* We note that reductions in funded enrollment in response to the proposed rule will require some degree of shifting of funds from existing expenditures, such as those to support funded slots that are currently empty or spending to recruit and train staff in a high turnover environment. Please see our request for comment on this point in Section B and the discussion under the heading "Connecting Baseline Uncertainty with Differing Estimates of Regulatory Effects."

L. Non-Quantified Impacts of Certain Elements of the Proposed Rule

In addition to the effects that are quantified elsewhere in this analysis, we have identified a select number of provisions that would have impacts that are not quantified or monetized.

Estimated Impact of Relevant Provisions on Slot Loss

Sections C through G of this RIA monetize the provisions of this proposed rule that we anticipate would have the largest potential impact. Some of the provisions described in this section may also result in costs that have not been monetized. As quantified above, one potential impact of enacting the proposed standards at current funding levels is a reduction in Head Start slots in some programs. A reduction in Head Start slots would reduce access to high-quality early childhood education for some children ages birth to 5 from low-income families. However, this impact is difficult to qualify because a substantial number of current Head Start slots remain unfilled currently, due to staffing shortage and other constraining factors. A loss of funded slots that are unfilled would not impact children who are currently enrolled.

The children who would be impacted by this loss of access would not receive high-quality services from Head Start and would not experience the positive outcomes for children and families who participate in the Head Start program. Some children who lose access to Head Start may receive early childhood education through State or local preschool programs, which are offered in many areas of the country. Another potential impact is that some children who would otherwise have been served by Head Start may receive early care and education in programs or settings that lack the quality to adequately support their learning and development, though we note that, as described in the NPRM preamble, absent the quality improvements under the proposed rule, Head Start quality is likely to deteriorate over time. Loss of access to Head Start may also reduce opportunity for parents and caregivers to participate in the workforce.

Expected Impact of Preventing and Addressing Lead Exposure (§ 1302.48)

This NPRM has new requirements for programs to test the lead levels in their facilities and if applicable, remediate exposure risks. Below we summarize findings from a few select research studies. Decades of research have shown that high lead levels are harmful for children's development.[287] Research also shows, however, that lead remediation has long-term benefits to children's health and economic benefits to society as they mature into adolescence and beyond. For instance, a

[287] Finkelstein, Y., Markowitz, M. E., & Rosen, J. F. (1998). Low-level lead-induced neurotoxicity in children: an update on central nervous system effects. *Brain research reviews,* 27, 168–176.

2002 CDC study found that reduced lead exposure in the United States since 1976 has resulted in a $110 billion to $319 billion economic benefit due to higher IQs and worker productivity.[288] Research has also found that the lead and copper rule investment from the EPA has led to an estimated benefit ratio of 35:1 meaning that that for every $1 invested, the economic return would be about $35.[289] Furthermore, a research study that conducted a cost-benefit analysis on every dollar invested in lead paint control has been estimated to be a $17 to $221 return.[290] This research suggests there may be a societal benefit that lead remediation regulations can make. While we cannot estimate the quantitative cost savings that this provision will have, we note that testing on its own does not make anyone healthier; the cause-and-effect chain between testing and health outcomes includes activities that have costs. We welcome public comment on these costs and on this analysis more generally, including interpretation of and extrapolation from the studies referenced above.

Additional Impact of Workforce Supports: Staff Wages and Benefits (§ 1302.90)

In addition to the effects (costs) quantified in this RIA, these provisions may also result in potential cost savings to governments at various jurisdictional levels (which are mostly transfers, when categorized from a society-wide perspective) due to benefit reductions for ECE workers. Specifically, an increase in wages and benefits for ECE workers may result in a reduction in the number of households receiving a range of safety net benefits, including LIHEAP, housing assistance, Medicaid/CHIP, SNAP, SSI, TANF, and WIC. Additionally, increases in staff wages will likely have an outsized impact on improving educational quality of Head Start programming. When teachers are fairly compensated their stress likely decreases, and dedication and commitment to their work likely improves. This will improve the quality of services delivered in programs. While descriptive and non-causal, research illustrates that low wages are a primary driver of high turnover in early childhood educator positions.[291] Research has also demonstrated that improved wages are correlated with higher quality programs.[292] These research findings are not causal, and, to the best of our knowledge, no cost-benefit analysis has been conducted related to the impact of increased wages in the early childhood sector. Therefore, our conclusions here are tentative.

By improving wages, teachers may choose to stay in the profession longer and may spend more time building the skills necessary to support high-quality early childhood programming and high-quality teacher-child interactions. Furthermore, improvements in staff retention overall due to improved wages and benefits likely promotes more stable staffing across the program and provides continuity of services for enrolled children and may also reduce stress and workload for other staff in the program due to fewer staff vacancies.

It is also likely that there will be potential cost savings from the effects of this proposed rule mitigating the high expenses associated with high turnover. When Head Start programs experience staffing shortages, they will often ask existing staff to work additional hours to compensate for the lack of adequate coverage. In some cases, substitute or temporary staff will be hired and sometimes this comes at an increased cost. Presumably, after the implementation of this proposed policy, these excess costs (experienced as remunerations increases for the aggregate collection of Head Start teachers) will be reduced because the workforce will be more stable and programs will experience improved retention.

Estimated Impact of Mental Health Services (§ 1302 Subpart D; Subpart H; Subpart I)

In addition to the effects (costs) quantified in Section E of this RIA, there are numerous additional benefits to enhancing provisions related to mental health supports. Advancing science in child development demonstrates that birth to age five is an important period for brain development and is a critical foundation on which all later development builds. Mental health and social-emotional well-being during this period are foundational for family well-being, children's healthy development, and early learning and are associated with positive long-term outcomes. Early childhood experiences, like trusting relationships with caregivers in a stable, nurturing environment, aid in the development of skills that build resilience. The enhancements to the requirements for mental health supports would promote higher-quality services for children in Head Start programs across the country and would support child, family, and staff well-being.

Specifically, enhancements to § 1302 Subpart D enhances health program services to explicitly include mental health. These regulatory changes also reflect a preventative approach to mental health across comprehensive service areas, such as health and family engagement. The addition of mental health screening would support programs in having conversations about mental health early and often. Screening would facilitate the identification of children, families, and staff with specific needs and allow for intervention before more time and resource intensive care becomes necessary. Mental health screening may result in nominal costs to programs that elect to purchase specific screening tools. § 1302.45(a) also adds a requirement that a program have a multidisciplinary team responsible for mental health. We believe this team would be comprised of existing staff positions so would have an associated opportunity cost not reflected in budgets.

Estimated Impact of Modernizing Engagement With Families (§ 1302.11; § 1302.13; § 1302.15; § 1302.34; § 1302.50)

These provisions enhance existing requirements that programs must follow when completing their community needs assessments. Programs would be required to identify communication methods to best engage with prospective and enrolled families, and to use modern technologies to streamline

[288] Grosse, S. D., Matte, T. D., Schwartz, J., & Jackson, R. J. (2002). Economic gains resulting from the reduction in children's exposure to lead in the United States. Environmental health perspectives, 110(6), 563–569. *https://doi.org/10.1289/ehp.02110563.*

[289] Levin, R., & Schwartz, J. (2023). A better cost:benefit analysis yields better and fairer results: EPA's lead and copper rule revision. *Environmental Research,* 229, 115738. *https://doi.org/10.1016/j.envres.2023.115738.*

[290] Gould, E. (2009). Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control. *Environmental Health Perspectives,* 117(7). *https://doi.org/10.1289/ehp.0800408.*

[291] Caven, M., Khanani, N., Zhang, X., & Parker, C.E. (2021). *Center-and program-level factors associated with turnover in the early childhood education workforce (REL 2021–069).* U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Northeast & Islands.; Whitebook, M., Howes, C., & Phillips, D. (2014). *Worthy Work, STILL Unlivable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study.* Center for the Study of Child Care Employment. *https://cscce.berkeley.edu/wp-content/uploads/publications/ReportFINAL.pdf.*

[292] Isaccs, J., Adelstein, S., Kuehn, D. (2018). Early Childhood Educator Compensation in the Washington Region. Urban Institute. *https://www.urban.org/sites/default/files/publication/97676/early_childhood_educator_compensation_final_2.pdf.*

information gathering and improve communications. There is significant benefit to families in giving them a voice in the way that programs choose to communicate. Using communication modalities and methods that are easiest to families would enhance engagement with Head Start and increase program accessibility. Programs would also be required to implement improvements to streamline the enrollment experience for families. There may be nominal costs for programs to make these determinations and implement new technologies. Streamlining the enrollment experience for families would create more user-friendly and efficient processes, reduce burden and build trust with families, and support Head Start in more equitably and effectively delivering services.

Estimated Impact of Community Assessments (§ 1302.11)

The changes to these provisions address concerns that Head Start programs and others in the field have raised about the burdens of the community needs assessment. These provisions would promote clarity on the intent of the community assessment, align with best practices, and increase the effectiveness in how the community assessment is used to inform key aspects of program design and approach. Requiring a strategic approach to determine what data to collect prior to conducting the community needs assessment and how to use the needs assessment to achieve intended outcomes would promote overall effectiveness of the community assessment to drive programmatic decision making. They may also facilitate reductions in cost of time-consuming or complex assessment and analytical techniques and reduce barriers to programs being able to use their community assessment data to effectively guide programmatic decisions. Programs would also be allowed to use publicly or local available data as a proxy, which would reduce duplication of efforts and further lessen burden, and may facilitate coordination with other community programs.

Other new requirements related to the collection of specific elements in the community needs assessment, such as geographic location, race, ethnicity, and languages, would facilitate Head Start's ability to understand the diversity of populations most in need of services, which in turn would help promote equity, inclusion, and accessibility in service delivery. Factors related to transportation needs and resources in communities reflects that transportation remains a significant barrier for many of the hardest to serve families and impedes Head Start's mission. Ensuring transportation needs and resources are part of the data that informs a program's design and service delivery would enable Head Start to more effectively meet the needs of families and improve access to Head Start services.

Estimated Impact of Adjustment for Excessive Shelter Costs for Eligibility Determination (§ 1302.12)

This provision would allow a program to adjust a family's income to account for excessive shelter costs. This provision reflects a transfer of benefits from one potentially eligible family to another, however consistent with Section 1302.14 and 1302.13 in the HSPPS which is unchanged in this current proposal, programs will continue to establish selection criteria that prioritizes selection of participants based on need. There may be nominal implementation costs as Head Start programs implement these new income calculations. Children whose families have few resources because they earn near-poverty level wages and live in areas with a high-cost of living would newly be eligible for Head Start. This would enable Head Start to continue to prioritize the enrollment of families most in need of services. This provision also increases alignment with other means-tested Federal programs (*e.g.,* SNAP, see relevant section in Preamble for details) that use an income adjustment to account for excessive shelter costs.

Estimated Impact of Migrant and Seasonal Head Start Eligibility (§ 1302.12)

The modifications to eligibility requirements in this provision would benefit MSHS programs and families by reducing barriers to enrolling farmworker families in need of program services. The provisions related to eligibility duration would address an existing inequity between infants and toddlers served in Early Head Start programs and those served in MSHS programs. The existing requirement creates an inequity because infants and toddlers served in Early Head Start programs can receive services for the duration of the program, meaning until they turn three and age out of the program, whereas the MSHS family is no longer considered eligible for the program after two years. Therefore, the young children of agricultural workers are not provided the same potential duration of services as infants and toddlers served by Early Head Start. This change would also promote continuity for families served by MSHS and reduce paperwork for families and programs.

Estimated Impact of Serving Children With Disabilities (§ 1302.14)

These provisions clarify language to address an inconsistency between the HSPPS and the Act. This provision reflects a transfer of benefits from one potentially eligible family to another. A non-quantifiable benefit of this provision would be addressing confusion caused by the discrepancy. Further clarification that the requirement to fill ten percent of slots with children with disabilities under IDEA is a floor and not a ceiling would support Head Start in maximizing services to children with disabilities who would benefit from the program's strong focus on inclusive early childhood settings.

Expected Benefits of Ratios in Center-Based Early Head Start Programs (§ 1302.21)

This provision encourages programs to consider reducing teacher-child ratios for their youngest classrooms, to provide the highest quality care and learning opportunities for infants enrolled in Head Start. This provision has numerous non-quantifiable benefits for children and families served by Head Start. A warm, responsive relationship between an infant and caregiver is a crucial foundation for infants to learn and develop. A lower teacher-child ratio would support the establishment of this strong, secure relationship and allow for more individualized attention between the infant and teacher. A lower ratio of one teacher to three infants also aligns with the National Resource Center for Health and Safety in Child Care and Early Education recommendations for center-based programs with classrooms where the majority of children are under 12 months old. Further, research indicates that, generally, lower teacher-child ratios in ECE classrooms relate to higher classroom quality and stronger child outcomes. As the premier ECE provider in the United States, Head Start sets an example for early childhood programs nationwide, and this provision would further support high-quality early childhood services across the country.

Expected Benefits of Center-Based Service Duration for Early Head Start (§ 1302.21)

This provision clarifies that the 1,380 hours of planned class operations for children in EHS should occur across a minimum of 46 weeks per year. We believe most programs are already

operating year-round; however, a small number of programs may be operating less than a full year and we would like to promote full-year services for infants and toddlers in EHS. These programs may incur costs associated with transitioning to full-year services. However, there are substantial non-quantifiable benefits to young children's development. Research on full-day and full-year programs suggests children in poverty benefit from longer exposure to high-quality early learning programs than what is provided by part-day and/or part-year programs.

Expected Benefits of Family Service Worker Family Assignments (§ 1302.52)

This provision seeks to ensure that an individual family services staff is assigned to work with no greater than 40 families. Based on internal data, 42 percent of programs have caseloads that exceed 40 families. We estimate that a total of 3,231 new family services staff would need to be hired to meet this new requirement at a total cost of $170,052,632. There are numerous non-quantifiable benefits to lower family services staff caseloads. This provision would address staff well-being, reduce burnout, and lower expressions of job frustration and dissatisfaction. For staff well-being, large caseloads are associated with staff burnout and turnover, feeling overwhelmed, and expression of job frustration and dissatisfaction. This provision would improve the quality of family services and improve staff well-being and reflects best practice in the field.

Expected Benefits of Participation in Quality Rating and Improvement Systems (§ 1302.53)

This provision encourages Head Start programs to participate in State QRIS to the extent practicable if the State system has strategies in place to support their participation. We assume that programs newly participating in QRIS would incur additional costs and burden from substantive changes in the form of revised processes and potentially additional or different documentation, as well as possible duplication of monitoring and assessment processes. Non-quantifiable benefits of participation in QRIS include continued quality improvement efforts, providing a common metric through which families can understand and make decisions about program options, and aligning standards across a statewide early care and education system.

Expected Benefits of Services to Enrolled Pregnant People (§ 1302.80; § 1302.82)

This provision enhances services to enrolled pregnant people by requiring the newborn visit to include a discussion of maternal mental and physical health, infant health, and support for basic needs; and requiring programs to track and record information on service delivery for enrolled pregnant women. We assume programs may incur nominal costs associated with enhancements to record-keeping. Non-quantifiable benefits of these provisions would be assessing the child care, health, and mental health needs of mothers in the critical period after child birth, which would enable Head Start to provide support to mothers and identify opportunities for collaboration and intervention. Improved tracking and recording of services to enrolled pregnant women would also support OHS in understanding the services provided and identifying how to best be responsive to the needs of enrolled pregnant people. These records would also be used to validate the use of Federal funds to serve pregnant people and to inform ongoing conversations program staff have with the pregnant people about her needs before and after the baby is born.

Expected Benefits of Standards of Conduct (§ 1302.90)

These provisions revise current requirements to ensure we are as clear as possible and that our requirements reflect current best practices and more precise terminology around standards of conduct. These changes would result in aligned definitions with other Federal resources and clarifications to existing requirements. Non-quantifiable benefits of these enhancements include critical supports to child safety by supporting staff in recognizing potential child abuse and neglect and understanding their legal responsibility as a mandated reporter, which would improve child safety and program response to violations of standards of conduct.

Expected Benefits of Staff Training to Support Child Safety (§ 1302.92; § 1302.101)

These provisions enhance requirements and frequency of staff training and professional development. We assume there would be nominal costs associated with more frequent training. Non-quantifiable benefits of an increased frequency of training would be to allow programs to offer staff advanced training opportunities on areas of local importance or greater complexity, such as culturally responsive practices in reporting, issues related to disproportionate reporting, and information about at-risk populations, as well as emphasize the importance of child safety in Head Start. This proposed policy change would also create more equitable opportunities for staff to understand and discuss their ethical and legal responsibilities. Annual training on positive strategies to understand and support children's social and emotional development would also enhance the use of positive strategies and have the added benefit of increasing opportunities for peer support as appropriate.

Expected Benefits of Definition of Income (§ 1305.2)

This provision would revise the definition of income by providing a clear and finite list of what is considered income and what is not considered income. Non-quantifiable benefits of this provision include making the policy less burdensome and complicated for programs to implement, ensuring programs can more easily identify an applicants' income, and promote consistent interpretation on what to include in calculating income across programs.

Initial Small Entity Analysis

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This analysis, as well as other sections in this document and the Preamble of the proposed rule, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

A. Description and Number of Affected Small Entities

The SBA maintains a Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS).[293] We replicate the SBA's description of this table:

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget, effective January 1, 2022.

The size standards are for the most part expressed in either millions of dollars (those preceded by ''$'') or number of employees (those without the

[293] U.S. Small Business Administration (2023). ''Table of Size Standards.'' March 17, 2023 *https://www.sba.gov/document/support--table-size-standards.*

''$''). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

This proposed rule will impact small entities in NAICS category 624410, Child Care Services, which has a size standard of $9.5 million dollars. We assume that most Head Start programs, if not all, are below this threshold and are considered small entities.

B. Description of the Potential Impacts of the Rule on Small Entities

In the main analysis, we estimate that about $2.576 billion in additional funding would be necessary to fully implement the proposed rule in 2033, which is about a 17% increase above baseline funding levels. Most of the funding needed is proportional to the size of the Head Start program or agency, so we do not separately assess the potential impacts of the rule on small entities of different sizes. The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3% impact on revenue on at least 5% of small entities. Since the proposed rule would likely result in increased expenditures of about 17%, we find that the proposed rule would likely have a significant impact on a substantial number of small entities.

C. Alternatives To Minimize the Burden on Small Entities

ACF considered many policy alternatives to the proposed rule, some of which are quantified in this analysis. Tables I1 through I4 summarize the impacts on expenditures under the wage-parity policy, reporting yearly estimates, and present value and annualized values corresponding to 3% and 7% discount rates. This table presents separate analyses of the following policies: staff wages, staff benefits, staff breaks, family service worker family assignments, mental health supports, and preventing and addressing lead exposure. This document also considers the impacts of expenditures associated with the minimum pay requirement, and itemized impacts of the lead in water and lead-based paint policies. These tables and additional analyses in the narrative of this document enabled ACF to appropriately consider a range of feasible policy alternatives. This analysis also considers excluding the following elements of the proposed rule: provisions related to benefits, provisions related to staff breaks, provisions related to family service workers, provisions related to mental health support, and provisions related to lead hazards.

List of Subjects

45 CFR Part 1301

Early education, Grant programs, Head Start, Program governance, Social programs

45 CFR Part 1302

Compensation, Early education, Grant programs, Head Start, Mental health, Quality improvement, Social programs, Workforce.

45 CFR Part 1303

Early education, Financial management, Grant programs, Head Start, Social programs.

45 CFR Part 1304

Accountability, Early education, Grant programs, Head Start, Monitoring, Social programs.

45 CFR Part 1305

Definitions, Early education, Grant programs, Head Start, Social programs.

Dated: November 8, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For reasons stated in the preamble, we propose to amend 45 CFR parts 1301, 1302, 1303, 1304, and 1305 as follows.

PART 1301—PROGRAM GOVERNANCE

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. Revise § 1301.1 to read as follows:

§ 1301.1 Purpose

An agency, as defined in part 1305 of this chapter, must establish and maintain a formal structure for program governance that includes a governing body, a policy council at the agency level and policy committee at the delegate level, and a parent committee. Governing bodies have a legal and fiscal responsibility to administer and oversee the agency's Head Start programs. Policy councils are responsible for the direction of the agency's Head Start programs.

■ 3. Amend § 1301.3 by revising paragraph (a) and removing the word ''grantee'' and adding in its place the words ''grant recipient'' in paragraph (b)(2).

The revision reads as follows:

§ 1301.3 Policy council and policy committee.

(a) *Establishing policy councils and policy committees.* Each agency must establish and maintain a policy council responsible for the direction of the Head Start program at the agency level, and a policy committee at the delegate level. If an agency delegates operational responsibility for the entire Head Start program to one delegate agency, the policy council and policy committee may be the same body.

* * * * *

■ 4. Amend § 1301.4 by revising paragraph (b)(3) to read as follows:

§ 1301.4 Parent committees.

* * * * *

(b) * * *

(3) Within the guidelines established by the governing body, policy council or policy committee, participate in the recruitment and screening of Head Start employees.

PART 1302—PROGRAM OPERATIONS

■ 5. The authority for part 1302 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 6. Revise § 1302.1 to read as follows:

§ 1302.1 Overview

This part implements these statutory requirements in sections 641A, 645, 645A, and 648A of the Act by describing all of the program performance standards that are required to operate Head Start Preschool, Early Head Start, American Indian and Alaska Native and Migrant or Seasonal Head Start programs. The part covers the full range of operations from enrolling eligible children and providing program services to those children and their families, to managing programs to ensure staff are qualified and supported to effectively provide services. This part also focuses on using data through ongoing program improvement to ensure high-quality service. As required in the Act, these provisions do not narrow the scope or quality of services covered in previous regulations. Instead, these regulations raise the quality standard to reflect science and best practices, and streamline and simplify requirements so programs can better understand what is required for quality services.

Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance

§ 1302.10 [Amended]

■ 7. Amend § 1302.10 in the first sentence by removing the word

''grantee'' and adding in its place the words ''grant recipient''.

■ 8. Amend § 1302.11 by revising paragraph (b) to read as follows:

§ 1302.11 Determining community strengths, needs, and resources.

* * * * *

(b) *Community wide strategic planning and needs assessment (community assessment).* (1) A program must conduct a community assessment at least once over the five-year grant period to:

(i) Identify populations most in need of services including relevant family or child risk factors;

(ii) Inform the program's design and service delivery to reflect needs and diversity of the community, and to promote equity, inclusion, and accessibility;

(iii) Inform the enrollment, recruitment, and selection process to prioritize the enrollment of those populations with relevant risk factors identified under paragraph (b)(1)(i) of this section;

(iv) Identify strengths and resources in the community that can be leveraged for service delivery, coordination, and partnership efforts including in the delivery of education, health, nutrition, and referrals to social services to eligible children and families;

(v) Identify the communication methods and modalities available to the program that best engage with prospective and enrolled families of all abilities.

(2) In conducting the community assessment, a program must collect and utilize data that describes community strengths, needs, and resources and include, at a minimum:

(i) Relevant demographic and other data about eligible children and expectant mothers, including:

(A) Children living in poverty;

(B) Children experiencing homelessness in collaboration with, to the extent possible, McKinney-Vento Local Education Agency Liaisons (42 U.S.C. 11432 (6)(A));

(C) Children in foster care;

(D) Children with disabilities, including types of disabilities and relevant services and resources provided to these children by community agencies; and

(E) Geographic location, race, ethnicity, and languages they speak.

(ii) The education, health, nutrition and social service needs of eligible children and their families, including prevalent social or economic factors, such as transportation needs, that impact their well-being;

(iii) Typical work, school, and training schedules of parents with eligible children;

(iv) Other child development, child care centers, and family child care programs that serve eligible children, including home visiting, publicly funded State and local preschools, and the approximate number of eligible children served;

(v) Resources that are available in the community to address the needs of eligible children and their families, especially transportation resources; and,

(vi) Strengths of the community.

(3) Programs should have a strategic approach:

(i) To determine what data to acquire to reach goals in paragraph (b)(1) of this section prior to conducting the community assessment and

(ii) For how to use the data acquired to reach goals in paragraph (b)(1) of this section after conducting the community assessment

(4) When determining what data to acquire under paragraph (b)(2) of this section, if the burden or cost to acquire certain data is unreasonable, programs should identify other publicly or locally available data that could be used as a proxy.

(5) A program must annually review and, where needed as determined by the program, update the community assessment to identify any significant shifts in community demographics, needs, and resources that may impact program design and service delivery. Programs must consider how the annual update can inform and support management approaches for continuous quality improvement, program goals, ongoing oversight, and results from their self-assessment as required in subpart J of this part (§§ 1302.101 through 1302.103).

(6) A program must consider whether the characteristics of the community allow it to include children from diverse economic backgrounds that would be supported by other funding sources, including private pay, in addition to the program's eligible funded enrollment. A program must not enroll children from diverse economic backgrounds if it would result in a program serving less than its eligible funded enrollment.

■ 9. Amend § 1302.12 by revising paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (e)(1)(ii), (e)(4), (f), (i)(1), and (j)(3) and (4), adding paragraph (j)(5), and revising paragraph (l) to read as follows:

§ 1302.12 Determining, verifying, and documenting eligibility.

* * * * *

(b) * * *

(1) For Early Head Start, except when the child is transitioning to Head Start Preschool, a child must be an infant or a toddler younger than three years old.

(2) For Head Start Preschool, a child must:

(i) Be at least three years old or, turn three years old by the date used to determine eligibility for public school in the community in which the Head Start Preschool program is located; and,

* * * * *

(e) * * *

(1) * * *

(ii) The Tribe has resources within its grant, without using additional funds from HHS intended to expand Head Start services, to enroll pregnant women or children whose family incomes exceed low-income guidelines or who are not otherwise eligible; and,

* * * * *

(4) An Indian Tribe or Tribes that operates both an Early Head Start program and a Head Start Preschool program may, at its discretion, at any time during the grant period involved, reallocate funds between the Early Head Start program and the Head Start Preschool program in order to address fluctuations in client populations, including pregnant women and children from birth to compulsory school age. The reallocation of such funds between programs by an Indian Tribe or Tribes during a year may not serve as a basis for any reduction of the base grant for either program in succeeding years.

(f) *Migrant or Seasonal eligibility requirements.* A child is eligible for Migrant or Seasonal Head Start, if the family meets an eligibility criterion in paragraphs (c) and (d) of this section; and one family member is primarily engaged in agricultural employment.

* * * * *

(i) * * *

(1) To verify eligibility based on income, program staff must use tax forms, pay stubs, or other proof of income to determine the family income for the relevant time period.

(i) The program must calculate total gross income using applicable sources of income.

(ii) A program may make an adjustment to a family's gross income calculation for the purposes of determining eligibility in order to account for excessive housing expenses. A program must use available bills, bank statements, and other relevant documentation provided by the family to calculate total annual housing expenses with appropriate multipliers to:

(A) Determine if a family spends more than 30 percent of their total gross

income on housing expenses, as defined in part 1305 of this subchapter, and

(B) If applicable, reduce the total gross income by the amount spent in housing expenses above the 30 percent threshold to calculate the adjusted gross income for determining income eligibility.

(iii) If the family cannot provide tax forms, pay stubs, or other proof of income for the relevant time period, program staff may accept written statements from employers, including individuals who are self-employed, for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(iv) If the family reports no income for the relevant time period, a program may accept the family's signed declaration to that effect, if program staff describes efforts made to verify the family's income, and explains how the family's total income was calculated or seeks information from third parties about the family's eligibility if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k)(2) of this section.

(v) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

* * * * *

(j) * * *

(3) If a child moves from an Early Head Start program to a Head Start Preschool program, program staff must verify the family's eligibility again.

(4) If a program operates both an Early Head Start and a Head Start Preschool program, and the parents wish to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start Preschool services until enrolled in school, provided the child is eligible.

(5) If a program operates a Migrant and Seasonal Head Start program, children younger than age three participating in the program remain eligible until they turn three years old consistent with paragraph (j)(2) of this section.

* * * * *

(l) Program policies and procedures on violating eligibility determination regulations. A program must establish written policies and procedures that describe all actions taken against staff who intentionally violate Federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive Head Start services.

* * * * *

■ 10. Revise § 1302.13 to read as follows:

§ 1302.13 Recruitment of children.

In order to reach those most in need of services, a program must develop and implement a recruitment process designed to actively inform all families with eligible children within the recruitment area of the availability of program services. A program must use modern technologies to encourage and assist families in applying for admission to the program, and to reduce the family's administrative and paperwork burden in the application and enrollment process. A program must include specific efforts to actively locate and recruit children with disabilities and other vulnerable children, including homeless children and children in foster care.

■ 11. Amend § 1302.14 by revising paragraph (a)(3), adding paragraph (a)(5), revising paragraph (b)(1), and adding paragraph (d) to read as follows:

§ 1302.14 Selection process.

(a) * * *

(3) If a program operates in a service area where Head Start Preschool eligible children can enroll in high-quality publicly funded pre-kindergarten for a full school day, the program must prioritize younger children as part of the selection criteria in paragraph (a)(1) of this section. If this priority would disrupt partnerships with local education agencies, then it is not required. An American Indian and Alaska Native or Migrant or Seasonal Head Start program must consider whether such prioritization is appropriate in their community.

* * * * *

(5) A program may consider the enrollment of children of staff members as part of the selection criteria in paragraph (a)(1) of this section.

(b) * * *

(1) A program must ensure at least 10 percent of its total actual enrollment is filled by children eligible for services under IDEA, unless the responsible HHS official grants a waiver.

* * * * *

(d) *Understanding barriers to enrollment.* A program is required to use data from the selection process to understand why children selected for the program do not enroll or attend, such as a lack of transportation being a barrier to enrolling once they are selected. A program must use this data to inform ongoing program improvement efforts as described in § 1302.102(c) to promote enrolling the children most in need of program services.

■ 12. Amend § 1302.15 by revising paragraph (b)(2) and adding paragraph (g) to read as follows:

§ 1302.15 Enrollment.

* * * * *

(b) * * *

(2) Under exceptional circumstances, a program may maintain a child's enrollment in Head Start Preschool for a third year, provided that family income is verified again. A program may maintain a child's enrollment in Early Head Start as described in § 1302.12(j)(2).

* * * * *

(g) *User-friendly enrollment process.* A program must regularly examine their enrollment processes and implement any identified improvements to streamline the enrollment experience for families.

■ 13. Amend § 1302.16 by adding paragraph (a)(2)(v) to read as follows:

§ 1302.16 Attendance.

(a) * * *

(2) * * *

(v) Examine barriers to regular attendance, such as access to safe and reliable transportation, and where possible, provide or facilitate transportation for the child if needed;

* * * * *

■ 14. Amend § 1302.17 by revising paragraphs (a)(2) through (4), (b)(2) introductory text, and (b)(3) to read as follows:

§ 1302.17 Suspension and expulsion.

(a) * * *

(2) A temporary suspension must be used only as a last resort in extraordinary circumstances where there is a serious safety threat that has not been reduced or eliminated by the provision of interventions and supports recommended by the mental health consultant and the program needs time to put additional appropriate services in place.

(3) Before a program determines whether a temporary suspension is necessary, a program must engage with a mental health consultant, the multidisciplinary team responsible for mental health, collaborate with the parents, and utilize appropriate community resources—such as behavior coaches, psychologists, other appropriate specialists, or other resources—as needed, to determine no other reasonable option is appropriate.

(4) If a temporary suspension is deemed necessary, a program must help

the child return to full participation in all program activities as quickly as possible while ensuring child safety. A program must explore all possible steps and document all steps taken to address the behavior(s) and supports needed to facilitate the child's safe reentry and continued participation in the program. Such steps must include, at a minimum:

(i) Continuing to engage with the parents, mental health consultant, the multidisciplinary team responsible for mental health, and other appropriate staff, and continuing to utilize appropriate community resources;

(ii) Providing additional program supports and services, including home visits; and,

(iii) Determining whether a referral to a local agency responsible for implementing IDEA is appropriate, or if the child has an individualized family service plan (IFSP) or individualized education program (IEP), consulting with the responsible agency to ensure the child receives the needed support services.

(b) * * *

(2) When a child exhibits persistent and serious challenging behaviors, a program must explore all possible steps and document all steps taken to address such problems, and facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging the parents, mental health consultant, and the multidisciplinary team responsible for mental health; considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation Act of 1973 to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability, and consulting with the parents and the child's teacher, and:

* * * * *

(3) If, after a program has explored all possible steps and documented all steps taken as described in paragraph (b)(2) of this section, a program, in consultation with the parents, the child's teacher, the agency responsible for implementing IDEA (if applicable), the mental health consultant, and the multidisciplinary team responsible for mental health determines that the child's continued enrollment presents a continued serious safety threat to the child or other enrolled children and determines the program is not the most appropriate placement for the child, the program must work with such entities to directly facilitate the transition of the child to a more appropriate placement that can immediately enroll and provide services to the child.

Subpart B—Program Structure

■ 15. Amend § 1302.20 by:

■ a. Revising paragraphs (a)(1) and (2) and (c)(1) and (2);

■ b. Removing the word ''grantees'' and adding in its place words ''grant recipients'' in paragraph (c)(3) introductory text;

■ c. Revising paragraphs (c)(3)(i) and (iii);

■ d. Removing the word ''grantees'' and adding in its place words ''grant recipients'' in paragraph (c)(3)(vi); and

■ e. Revising paragraphs (c)(4) and (d).

The revisions read as follows:

§ 1302.20 Determining program structure.

(a) * * *

(1) A program must choose to operate one or more of the following program options: center-based, home-based, family child care, or an approved locally designed variation as described in § 1302.24. The program option(s) chosen must meet the needs of children and families based on the community assessment described in § 1302.11(b). A Head Start Preschool program may not provide only the option described in § 1302.22(a) and (c)(2).

(2) To choose a program option and develop a program calendar, a program must consider in conjunction with the annual review of the community assessment described in § 1302.11(b)(2), whether it would better meet child and family needs through conversion of existing slots to full school day or full working day slots, extending the program year, conversion of existing Head Start Preschool slots to Early Head Start slots as described in paragraph (c) of this section, and ways to promote continuity of care and services. A program must work to identify alternate sources to support full working day services. If no additional funding is available, program resources may be used.

* * * * *

(c) * * *

(1) Consistent with section 645(a)(5)15 of the Head Start Act, grant recipients may request to convert Head Start Preschool slots to Early Head Start slots through the refunding application process or as a separate grant amendment.

(2) Any grant recipient proposing a conversion of Head Start Preschool services to Early Head Start services must obtain policy council and governing body approval and submit the request to their regional office.

(3) * * *

(i) A grant application budget and a budget narrative that clearly identifies the funding amount for the Head Start Preschool and Early Head Start programs before and after the proposed conversion;

* * * * *

(iii) A revised program schedule that describes the program option(s) and the number of funded enrollment slots for Head Start Preschool and Early Head Start programs before and after the proposed conversion;

* * * * *

(4) Consistent with section 645(d)(3)16 of the Act, any American Indian and Alaska Native grant recipient that operates both an Early Head Start program and a Head Start Preschool program may reallocate funds between the programs at its discretion and at any time during the grant period involved, in order to address fluctuations in client populations. An American Indian and Alaska Native program that exercises this discretion must notify the regional office.

(d) *Source of funding.* A program may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations for the purposes of meeting the Head Start Preschool and Early Head Start service duration requirements in this subpart.

■ 16. Amend § 1302.21 by revising paragraphs (b)(2), (c)(1)(i), (c)(2) and (3), and (c)(4) introductory text to read as follows:

§ 1302.21 Center-based option.

* * * * *

(b) * * *

(2) A class that serves children under 36 months old must have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher must be assigned consistent, primary responsibility for no more than four children to promote continuity of care for individual children. A program is encouraged to establish a lower teacher to child ratio for the youngest children they serve, provided that it does not jeopardize continuity of care for children. A program must minimize teacher changes throughout a child's enrollment, whenever possible, and consider mixed age group classes to support continuity of care.

* * * * *

(c) * * *

(1) * * *

(i) A program must provide 1,380 annual hours of planned class operations over the course of at least forty-six weeks per year for all enrolled children.

* * * * *

(2) *Head Start Preschool*—(i) *Service duration for at least 45 percent.* A program must provide 1,020 annual hours of planned class operation over the course of at least eight months per year for at least 45 percent of its Head Start Preschool center-based funded enrollment.

(ii) *Service duration for remaining slots.* A program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day.

(iii) *Double session.* Double session variation must provide classes for four days per week for a minimum of 128 days per year and 3.5 hours per day. Each double session class staff member must be provided adequate break time during the course of the day. In addition, teachers, assistants, and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment, and to give individual attention to children entering and leaving the center.

(iv) *Special provision for alignment with local education agency.* A Head Start Preschool program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraph (c)(2)(i) of this section if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery.

(3) *Exemption for Migrant or Seasonal Head Start programs.* A Migrant or Seasonal program is not subject to the requirements described in paragraph (c)(1) or (2) of this section, but must make every effort to provide as many days and hours of service as possible to each child and family.

(4) *Calendar planning.* A program must:

* * * * *

■ 17. Amend § 1302.22 by revising paragraphs (a) and (c)(2) introductory text to read as follows:

§ 1302.22 Home-based option.

(a) *Setting.* The home-based option delivers the full range of services, consistent with § 1302.20(b), through visits with the child's parents, primarily in the child's home and through group socialization opportunities in a Head Start classroom, community facility, home, or on field trips. For Early Head Start programs, the home-based option may be used to deliver services to some or all of a program's enrolled children. For Head Start Preschool programs, the home-based option may only be used to deliver services to a portion of a program's enrolled children.

* * * * *

(c) * * *

(2) *Head Start Preschool.* A Head Start Preschool home-based program must:

* * * * *

■ 18. Amend § 1302.23 by revising paragraphs (b)(2) through (4) to read as follows:

§ 1302.23 Family child care option.

* * * * *

(b) * * *

(2) *Mixed age with preschoolers.* When there is one family child care provider, with a mixed-age group of children that includes children over 36 months of age, the maximum group size is six children and no more than two of the six may be under 24 months of age. When there are two providers, the maximum group size is twelve children with no more than four of the twelve children under 24 months of age.

(3) *Infants and toddlers only.* When there is one family child care provider with a group of children that are all under 36 months of age, the maximum group size is four children, and no more than two of the four children may be under 18 months of age.

(4) *Maintaining ratios.* A program must maintain appropriate ratios during all hours of program operation. A program must ensure providers have systems to ensure the safety of any child not within view for any period. A program must make substitute staff available with the necessary training and experience to ensure quality services to children are not interrupted.

* * * * *

■ 19. Amend § 1302.24 by revising paragraphs (c)(1), (3), and (5) and removing paragraph (d).

The revisions read as follows:

§ 1302.24 Locally-designed program option variations.

* * * * *

(c) * * *

(1) The responsible HHS official may waive one or more of the requirements contained in §§ 1302.21(b), (c)(1)(i), and (c)(2)(i); 1302.22(a) through (c); and 1302.23(b) and (c), but may not waive ratios or group size for children under 24 months. Center-based locally designed options must meet the minimums described in section 640(k)(1) of the Act for center-based programs.

* * * * *

(3) If the responsible HHS official approves a waiver to allow a program to operate below the minimums described in § 1302.21(c)(2)(i), a program must meet the requirements described in § 1302.21(c)(2)(ii), or in the case of a double session variation, a program must meet the requirements described in § 1302.21(c)(2)(iii).

* * * * *

(5) In order to receive a waiver of service duration, a program must meet the requirement in paragraph (c)(4) of this section, provide supporting evidence that it better meets the needs of parents than the applicable service duration minimums described in § 1302.21(c)(1) and (c)(2)(i), § 1302.22(c), or § 1302.23(c), and assess the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes.

■ 20. Amend § 1302.34 by adding paragraph (b)(9) to read as follows:

§ 1302.34 Parent and family engagement in education and child development services.

* * * * *

(b) * * *

(9) The communication methods and modalities utilized by the program are the best available to engage with prospective and enrolled families of all abilities.

Subpart D—Health and Mental Health Program Services

■ 21. Revise the heading for subpart D to read as set forth above.

■ 22. Amend § 1302.40 by revising paragraph (b) to read as follows:

§ 1302.40 Purpose.

* * * * *

(b) A program must establish and maintain a Health and Mental Health Services Advisory Committee that includes Head Start parents, professionals, and other volunteers from the community.

■ 23. Revise § 1302.41 to read as follows:

§ 1302.41 Collaboration and communication with parents.

(a) For all activities described in this part, programs must collaborate with parents as partners in the health, mental health, and well-being of their children in a linguistically and culturally appropriate manner and communicate with parents about their child's health and mental health needs and development concerns in a timely and effective manner.

(b) At a minimum, a program must:

(1) Obtain advance authorization from the parent or other person with legal authority for all health, mental health, and developmental procedures

administered through the program or by contract or agreement, and, maintain written documentation if they refuse to give authorization for health and mental health services; and,

(2) Share with parents the policies for health or mental health emergencies that require rapid response on the part of staff or immediate medical attention.

■ 24. Amend § 1302.42 by:

■ a. Revising paragraph (b)(1)(i) and (b)(4); and

■ b. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in paragraph (e)(2).

The revisions read as follows:

§ 1302.42 Child health status and care.

* * * * *

(b) * * *

(1) * * *

(i) Obtain determinations from health care and oral health care professionals as to whether or not the child is up-to-date on a schedule of age appropriate preventive and primary medical, mental health, and oral health care, based on: the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the State in which they operate, immunization recommendations issued by the Centers for Disease Control and Prevention, and any additional recommendations from the local Health and Mental Health Services Advisory Committee that are based on prevalent community health problems;

* * * * *

(4) A program must identify each child's nutritional health needs, taking into account available health information, including the child's health records, relevant developmental or mental health concerns, and family and staff concerns, including special dietary requirements, food allergies, and community nutrition issues as identified through the community assessment or by the Health and Mental Health Services Advisory Committee.

* * * * *

■ 25. Amend § 1302.44 by revising paragraph (b) to read as follows:

§ 1302.44 Child nutrition.

* * * * *

(b) *Payment sources.* A program must use funds from USDA Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services. Head Start funds may be used to cover those allowable costs not covered by the USDA.

■ 26. Revise § 1302.45 to read as follows:

§ 1302.45 Supports for mental health and well-being.

(a) *Program-wide wellness supports.* To support a program-wide culture that promotes mental health, social and emotional well-being, and overall health and safety, a program must have a multidisciplinary team responsible for mental health that:

(1) Coordinates supports for adult mental health and well-being including engaging in nurturing and responsive relationships with families, engaging families in home visiting services, and promoting staff health and wellness, as described in § 1302.93;

(2) Coordinates supports for positive learning environments for all children; supportive teacher practices; and strategies for supporting children with social, emotional, behavioral or mental health concerns;

(3) Secures mental health consultation services no less than once a month to ensure a mental health consultant is available to partner with staff and families in a timely and effective manner and examines the approach to mental health consultation on an annual basis to determine if it meets the needs of the program;

(4) Ensures that all children receive adequate screening and appropriate follow up and the parent receives referrals about how to access services for potential social, emotional, behavioral, or other mental health concerns, as described in § 1302.33;

(5) Facilitates coordination and collaboration between mental health and other relevant program services, including education, disability, family engagement, and health services; and

(6) Builds community partnerships to facilitate access to additional mental health resources and services, as needed.

(b) *Mental health consultants.* A program must ensure that mental health consultants provide consultation services that build the capacity of adults in an infant or young child's life to strengthen and support the mental health and social and emotional development of children, including consultation with:

(1) The program to implement strategies that promote a program-wide culture of mental health, prevent mental health challenges from developing, and identify and support children with mental health and social and emotional concerns;

(2) Child and family services staff to implement strategies that build nurturing and responsive relationships and create positive learning environments that promote the mental health and social and emotional development of all children;

(3) Staff who have contact with children to understand and appropriately respond to prevalent child mental health concerns, including internalizing problems such as appearing withdrawn; externalizing problems such as behavioral concerns; and how exposure to trauma and substance use can influence risk;

(4) Families and staff to understand mental health and access mental health interventions or supports, if needed, including in the event of a natural disaster or crisis;

(5) The program to implement policies to limit suspension and prohibit expulsion as described in § 1302.17; and

(6) The program to support the well-being of children and families involved in any significant child health, mental health, or safety incident described in § 1302.102(d)(1)(ii).

■ 27. Amend § 1302.46 by revising paragraphs (b)(1)(iii) and (iv), (b)(2) introductory text, and (b)(2)(ii) and (iii), and adding paragraph (b)(2)(iv) to read as follows:

§ 1302.46 Family support services for health, nutrition, and mental health.

* * * * *

(b) * * *

(1) * * *

(iii) Learn about healthy pregnancy and postpartum care, as appropriate, including breastfeeding support and treatment options for parental mental health, including depression, anxiety, and substance use concerns;

(iv) Discuss information related to their child's mental health with staff, including typical and atypical behavior and development, and how to appropriately respond to their child and promote their child's social and emotional development; and,

* * * * *

(2) A program must provide ongoing support to assist parents' navigation through health and mental health systems to meet the general health and specifically identified needs of their children and must assist parents:

* * * * *

(ii) In understanding the results of diagnostic and treatment procedures as well as plans for ongoing care;

(iii) In familiarizing their children with services they will receive while enrolled in the program and to enroll and participate in a system of ongoing family health care; and

(iv) In providing information about how to access evidence-based mental health services for young children and

their families, including referrals if appropriate.

■ 28. Amend § 1302.47 by revising paragraphs (b)(1)(iii), (b)(5) introductory text, and (b)(5)(i), (iii), and (v) to read as follows:

§ 1302.47 Safety practices.

* * * * *

(b) * * *

(1) * * *

(iii) Free from pollutants, hazards and toxins that are accessible to children and could endanger children's safety including lead consistent with § 1302.48;

* * * * *

(5) *Safety practices.* All staff, consultants, contractors, and volunteers follow appropriate practices to keep children safe during all activities, including, at a minimum:

(i) Reporting of suspected or known child abuse and neglect, as defined by the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note), including that staff comply with applicable Federal, State, local, and Tribal laws;

* * * * *

(iii) Appropriate supervision of children at all times;

* * * * *

(v) All standards of conduct described in § 1302.90(c)(ii); and,

* * * * *

■ 29. Add § 1302.48 to subpart D to read as follows:

§ 1302.48 Preventing and Addressing Lead Exposure.

(a) *Preventing and addressing lead exposure through water.* A program must address lead in water from water fixtures used for human consumption in Head Start facilities constructed before 2014 and where lead service lines, plumbing, or fixtures may still exist, including, at a minimum:

(1) Sample and test water in such fixtures for lead on an annual basis, or, if approved by the governing body, a proportion of water in such fixtures each year to ensure they are tested at least once every five years;

(2) Sample and test water in such fixtures following remediation actions to address detectable lead or following a change to the water profile;

(3) All samples must be collected by an individual adequately trained to collect samples for lead testing;

(4) All samples must be analyzed by a laboratory that is certified by Environmental Protection Agency (EPA) or the State, territory, or Tribe for testing lead in drinking water;

(5) Restrict access to such fixtures within 24 hours of determining the water has a lead sample result at or above 5 parts per billion and provide notice in a timely manner to parents of children who may have consumed the water;

(6) Take remediation actions and restrict access until follow-up lead sample results indicate the water lead level is below 5 parts per billion;

(7) For lead sample results with detectable lead below 5 parts per billion, consider taking remediation actions to lower the lead level as low as practicable; and

(8) If point-of-use devices are used to address lead in water, appropriately use and maintain point-of-use devices that reduce lead levels as tested and certified by a third party according to National Sanitation Foundation/American National Standards Institute (NSF/ANSI) Standards for lead reduction.

(b) *Preventing and addressing lead exposure through paint.* A program must address lead-based paint hazards in paint, dust, and soil in Head Start facilities constructed before 1978 and where lead-based paint may still exist, including, at a minimum:

(1) Inspect for lead-based paint and assess for lead-based paint hazards (that, in the case of dust-lead hazards, are at or above the clearance levels) by a lead risk assessor certified by the EPA or an EPA-authorized State, territory, or Tribe;

(2) Immediately restrict access to any identified lead-based paint hazards (that, in the case of dust-lead hazards, are at or above the clearance levels) until abatement is completed;

(3) Abate any identified lead-based paint hazards (that, in the case of dust-lead hazards, are at or above the clearance levels) by a lead abatement contractor certified by the EPA or EPA-authorized State, territory, or Tribe; and

(4) Following conclusion of abatement, reassess for lead-based paint hazards by a certified risk assessor at least once every 2 years unless two reassessments conducted 2 years apart identify no lead-based paint hazards (that, in the case of dust-lead hazards, are at or above the clearance levels) in areas accessible to children.

(c) *Notification of lead testing and remediation.* A program must provide notification of results of any lead testing and any planned or completed remediation actions to parents and staff.

(d) *Conflicting requirements.* If applicable State or local laws or regulations have more stringent requirements for lead testing or remediation, a program should comply with the more stringent requirements.

Subpart E—Family and Community Engagement Program Services

■ 30. Amend § 1302.50 by revising paragraph (a) to read as follows:

§ 1302.50 Family engagement.

(a) *Purpose.* A program must integrate parent and family engagement strategies into all systems and program services to support family well-being and promote children's learning and development. Programs are encouraged to develop innovative two-generation approaches that address prevalent needs of families across their program that may leverage community partnerships or other funding sources. This includes communicating with families in a format that is most accessible.

* * * * *

■ 31. Amend § 1302.52 by revising paragraphs (c)(2) and (3) and (d) and adding paragraph (e) to read as follows:

§ 1302.52 Family partnership services.

* * * * *

(c) * * *

(2) Help families achieve identified individualized family engagement outcomes; and

(3) Establish and implement a family partnership agreement process that is jointly developed and shared with parents in which staff and families to review individual progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis, as necessary.

(d) *Approaches to family services.* A program must:

(1) Ensure the family services assignment process takes into account the varied interests, urgency, and intensity of identified family needs and goals.

(2) Ensure the planned number of families assigned to work with individual family services staff is no greater than 40, unless a program can demonstrate higher family assignments provide high quality family and community engagement services and maintain reasonable staff workload as described in paragraph (d)(3) of this section.

(3) Ensure meaningful employee engagement practices address family services workload experiences, in accordance with § 1302.101(a)(2).

(e) *Existing plans and community resources.* In implementing this section, a program must take into consideration any existing plans for the family made with other community agencies and availability of other community resources to address family needs, strengths, and goals, in order to avoid duplication of effort.

■ 32. Amend § 1302.53 by revising paragraphs (b)(1) and (2) to read as follows:

§ 1302.53 Community partnerships and coordination with other early childhood and education programs.

* * * * *

(b) * * *

(1) *Memorandum of understanding.* To support coordination between Head Start Preschool and publicly funded preschool programs, a program must enter into a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs in the service area of the program, as described in section 642(e)(5)22 of the Act.

(2) *Quality Rating and Improvement Systems.* A program, with the exception of American Indian and Alaska Native programs, should participate in its State or local Quality Rating and Improvement System (QRIS), to the extent practicable, if a State or local QRIS has a strategy to support Head Start participation without requiring programs to duplicate existing documentation from Office of Head Start oversight.

* * * * *

Subpart F—Additional Services for Children With Disabilities

■ 33. Amend § 1302.61 by revising paragraphs (c)(1)(v) and (c)(2)(ii) to read as follows:

§ 1302.61 Additional services for children.

* * * * *

(c) * * *

(1) * * *

(v) Services are provided in a child's regular Head Start classroom or family child care home to the greatest extent possible.

(2) * * *

(ii) For children with an IEP who are transitioning out of Head Start Preschool to kindergarten, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure steps are undertaken in a timely and appropriate manner to support the child and family as they transition to a new setting.

Subpart G—Transition Services

■ 34. Amend § 1302.70 by revising paragraphs (b)(1) and (2) and (d) to read as follows:

§ 1302.70 Transitions from Early Head Start.

* * * * *

(b) * * *

(1) Takes into account the child's developmental level and health and disability status, progress made by the child and family while in Early Head Start, current and changing family circumstances and, the availability of Head Start Preschool, other public pre-kindergarten, and other early education and child development services in the community that will meet the needs of the child and family; and

(2) Transitions the child into Head Start Preschool or another program as soon as possible after the child's third birthday but permits the child to remain in Early Head Start for a limited number of additional months following the child's third birthday if necessary for an appropriate transition.

* * * * *

(d) *Early Head Start and Head Start Preschool collaboration.* Early Head Start and Head Start Preschool programs must work together to maximize enrollment transitions from Early Head Start to Head Start Preschool, consistent with the eligibility provisions in subpart A of this part, and promote successful transitions through collaboration and communication.

* * * * *

■ 35. Amend § 1302.71 by revising the section heading to read as follows:

§ 1302.71 Transitions from Head Start Preschool to kindergarten.

* * * * *

■ 36. Amend § 1302.72 by revising paragraphs (a) and (c) to read as follows:

§ 1302.72 Transitions between programs.

(a) For families and children who move out of the community in which they are currently served, including homeless families and foster children, a program must undertake efforts to support effective transitions to other Head Start programs. If Head Start is not available, the program should assist the family to identify another early childhood program that meets their needs.

* * * * *

(c) A migrant or seasonal Head Start program must undertake efforts to support effective transitions to other migrant or seasonal Head Start or, if appropriate, Early Head Start or Head Start Preschool programs for families and children moving out of the community in which they are currently served.

Subpart H—Services to Enrolled Pregnant Women

■ 37. Amend § 1302.80 by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 1302.80 Enrolled pregnant women.

* * * * *

(d) A program must provide a newborn visit with each mother and baby to offer support and identify family needs. A program must schedule the newborn visit within two weeks after the infant's birth. At a minimum, the visit must include a discussion of the following: maternal mental and physical health, infant health, and support for basic needs.

(e) A program must track and record services an enrolled pregnant woman receives both from the program and through referrals, to help identify specific prenatal care services and resources the enrolled pregnant woman needs to support a healthy pregnancy.

(f) The program must provide services that help reduce barriers to healthy maternal and birthing outcomes for each family, including services that address disparities across racial and ethnic groups, and use data on enrolled pregnant women to inform program services.

■ 38. Revise § 1302.81 to read as follows:

§ 1302.81 Prenatal and postpartum information, education, and services.

(a) A program must provide enrolled pregnant women, mothers, fathers, and partners or other family members the prenatal and postpartum information, education and services that address, as appropriate, fetal development, the importance of nutrition including breastfeeding, the risks of alcohol, drugs, and smoking and the benefits of substance use treatment, labor and delivery, postpartum recovery, and infant care and safe sleep practices.

(b) A program must support pregnant women, mothers, fathers, partners, or other family members to access mental health services, including referrals, as appropriate, to address concerns including perinatal depression, anxiety, grief or loss, birth trauma, and substance use.

(c) A program must also address pregnant women's needs for appropriate supports for social and emotional well-being, nurturing and responsive caregiving, and father, partner, or other family member engagement during pregnancy and early childhood.

■ 39. Amend § 1302.82 by revising paragraph (a) to read as follows:

§ 1302.82 Family partnership services for enrolled pregnant women.

(a) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in the family partnership services as described in § 1302.52 and include a specific focus

on factors that influence prenatal and postpartum maternal and infant health. If a program uses a curriculum in the provision of services to pregnant women, this should be a maternal health curriculum, to support prenatal and postpartum education needs.

* * * * *

Subpart I—Human Resources Management

■ 40. Amend § 1302.90 by revising paragraphs (c)(1)(ii) through (iv) and adding paragraphs (c)(1)(vi), (e), and (f) to read as follows:

§ 1302.90 Personnel Policies.

* * * * *

(c) * * *

(1) * * *

(ii) Ensure staff, consultants, contractors, and volunteers do not engage in behaviors that would be reasonably suspected to negatively impact the health, mental health, or safety of children, including at a minimum:

(A) Corporal punishment or physically abusive behavior, defined as intentional use of physical force that results in, or has the potential to result in, physical injury. Examples include, but are not limited to, hitting, kicking, shaking, biting, forcibly moving, restraining, force feeding, or dragging.

(B) Sexually abusive behavior, defined as any completed or attempted sexual act, sexual contact, or exploitation. Examples include, but are not limited to, behaviors such as inappropriate touching, inappropriate filming, or exposing a child to other sexual activities.

(C) Emotionally harmful or abusive behavior, defined as behaviors that harm a child's self worth or emotional well-being or behaviors that are insensitive to a child's developmental needs. Examples include, but are not limited to, using isolation as discipline, using or exposing a child to public or private humiliation, or name calling, shaming, intimidating, or threatening a child.

(D) Neglectful behavior, defined as the failure to meet a child's basic physical and emotional needs including access to food, education, medical care, appropriate supervision by an adequate caregiver, and safe physical and emotional environments. Examples include, but are not limited to, withholding food as punishment or refusing to change soiled diapers as punishment.

(iii) Ensure staff, consultants, contractors, and volunteers report reasonably suspected or known incidents of child abuse and neglect, as defined by the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 note) and in compliance with Federal, State, local, and Tribal laws.

(iv) Ensure staff, consultants, contractors, and volunteers respect and promote the unique identity of each individual and do not stereotype on any basis, including gender, race, ethnicity, culture, religion, disability, sexual orientation, or family composition;

* * * * *

(vi) Ensure no child is left alone or unsupervised.

* * * * *

(e) *Wages*—(1) *Pay scale.* (i) By August 1, 2031, a program must implement a salary scale, salary schedule, wage ladder, or other similar pay structure for program staff salaries that incorporates the requirements in paragraphs (e)(2), (3), and (4) of this section, reflects salaries or wages for all other staff in the program, promotes salaries that are comparable to similar services in relevant industries in their geographic area, and considers, at a minimum, responsibilities, qualifications, and experience relevant to the position, and schedule or hours worked.

(ii) After August 1, 2031, a program must review its pay structure at least once every 5 years to assess whether it continues to meet the expectations described in paragraph (e)(1)(i) of this section.

(iii) A program must ensure that staff salaries are not in excess of level II of the Executive Schedule, as required in 42 U.S.C. 9848(b)(1).

(2) *Progress to pay parity for education staff with elementary school staff.* (i) A program must make measurable progress towards pay parity for Head Start teachers with kindergarten through third grade teachers. By August 1, 2031, a program must demonstrate it has made progress to parity by ensuring that each Head Start teacher receives an annual salary that is at least comparable to the annual salary paid to preschool teachers in public school settings in the program's local school district, adjusted for responsibilities, qualifications, and experience. A program may provide annual salaries comparable to a neighboring school district if the salaries are higher than a program's local school district.

(ii) A program must make measurable progress towards pay parity for all other Head Start education staff who work directly with children as part of their daily job responsibilities. By August 1, 2031, a program must demonstrate it has made progress to parity by ensuring that each staff member described in this provision receives an annual salary that is at least comparable to the salaries described in paragraph (e)(2)(i) of this section, adjusted for role, responsibilities, qualifications, and experience.

(iii) If there is not a sufficient number of comparable preschool teachers in school-based settings in the program's local or neighboring school district, a program may use an alternative method to implement the requirements in paragraphs (e)(2)(i) and (ii) of this section to determine appropriate comparison salaries. The alternative method must be approved by ACF.

(iv) To demonstrate measurable progress towards pay parity as described in paragraph (e)(2)(i) of this section, a program must regularly track data on how wages paid to their education staff compare to wages paid to preschool through third grade teachers in their local or neighboring school district.

(3) *Salary floor.* By August 1, 2031, a program must ensure, at a minimum, the wage or salary structure established or updated under paragraph (e)(1)(i) of this section provides all staff with a wage or salary that is generally sufficient to cover basic needs such as food, housing, utilities, medical costs, transportation, and taxes, or would be sufficient if the worker's hourly rate were paid according to a full-time, full-year schedule (or over 2,080 hours per year).

(4) *Wage comparability for all ages served.* A program must ensure the wage or salary structure established or updated under paragraph (e)(1)(i) of this section does not differ by age of children served for similar program staff positions with similar qualifications and experience.

(f) *Staff benefits.* (1) For each full-time staff member, defined as those working 30 or more hours per week during the program year, a program must:

(i) Provide or facilitate access to high-quality affordable health insurance;

(ii) Offer the accrual of paid sick leave based on hours worked or days of sick leave updated annually and the accrual at a minimum must meet the standards set by State or local laws, if applicable;

(iii) Offer job-protected periods of paid family leave consistent with eligibility for and protections in the Family and Medical Leave Act (FMLA) or, if applicable, the standards set by State or local laws;

(iv) Offer the accrual of paid vacation or personal time commensurate with experience or tenure, if the program

operates longer than a typical school year; and

(v) Offer access to short-term, free or minimal cost behavioral health services of approximately three to five outpatient visits per year;

(2) For each part-time staff member, a program must facilitate access to high-quality, affordable health insurance.

(3) For each staff member, a program must facilitate access to affordable child care, including connections to child care resource and referral agencies or other childcare consumer education organizations and, for staff who meet eligibility guidelines, facilitate enrollment in the child care subsidy program.

(4) For each staff member, a program must facilitate access to the Public Service Loan Forgiveness (PSLF) program, or other applicable student loan debt relief programs, including timely certification of employment.

(5) At least once every 5 years, a program must assess and determine if their benefits package for full-time staff is at least comparable to those provided to elementary school staff in the program's local or neighboring school district. Programs may offer additional benefits to staff, including more enhanced health benefits, retirement savings plans, flexible savings accounts, or life, disability, and long-term care insurance.

■ 41. Amend § 1302.91 by revising paragraphs (b), (e)(2) and (3), and (e)(8)(ii) to read as follows:

§ 1302.91 Staff qualification and competency requirements

* * * * *

(b) *Head Start director.* A program must ensure a Head Start director hired after November 7, 2016, has, at a minimum, a baccalaureate degree and experience in supervision of staff, fiscal management, and administration.

* * * * *

(e) * * *

(2) *Head Start Preschool center-based teacher qualification requirements.* (i) The Secretary must ensure no less than fifty percent of all Head Start Preschool teachers, nation-wide, have a baccalaureate degree in child development, early childhood education, or equivalent coursework.

(ii) As prescribed in section 648A(a)(3)(B) [27] of the Act, a program must ensure all center-based teachers have at least an associate's or bachelor's degree in child development or early childhood education, equivalent coursework, or otherwise meet the requirements of section 648A(a)(3)(B) of the Act.

(3) *Head Start Preschool assistant teacher qualification requirements.* As prescribed in section 648A(a)(2)(B)(ii) of the Act, a program must ensure Head Start Preschool assistant teachers, at a minimum, have a CDA credential or a State-awarded certificate that meets or exceeds the requirements for a CDA credential, are enrolled in a program that will lead to an associate or baccalaureate degree or, are enrolled in a CDA credential program to be completed within two years of the time of hire.

* * * * *

(8) * * *

(ii) A program must ensure all mental health consultants are licensed or under the supervision of a licensed mental health professional. A program must use mental health consultants with knowledge of and experience in serving young children and their families.

* * * * *

■ 42. Amend § 1302.92 by revising paragraph (b) to read as follows:

§ 1302.92 Training and professional development.

* * * * *

(b) A program must establish and implement a systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their job responsibilities, and attached to academic credit as appropriate, and integrated with employee engagement practices in accordance with § 1302.101(a)(2). At a minimum, the system must include:

(1) Staff completing a minimum of 15 clock hours of professional development per year. For teaching staff, such professional development must meet the requirements described in section 648A(a)(5) of the Act, and includes creating individual professional development plans as described in section 648A(f) of the Act.

(2) Annual training on mandatory reporting of suspected or known child abuse and neglect, that complies with applicable Federal, State, local, and Tribal laws;

(3) Annual training on positive strategies to understand and support children's social and emotional development, including the implementation of tools for preventing and managing challenging behavior;

(4) Training for child and family services staff on best practices for implementing family engagement strategies in a systemic way, as described throughout this part;

(5) Training for child and family services staff, including staff that work on family services, health, and disabilities, that builds their knowledge, experience, and competencies to improve child and family outcomes; and,

(6) Research-based approaches to professional development for education staff, that are focused on effective curricula implementation, knowledge of the content in Head Start Early Learning Outcomes Framework: Ages Birth to Five, partnering with families, supporting children with disabilities and their families, providing effective and nurturing adult-child interactions, supporting dual language learners as appropriate, addressing challenging behaviors, preparing children and families for transitions (as described in subpart G of this part), and use of data to individualize learning experiences to improve outcomes for all children.

* * * * *

■ 43. Amend § 1302.93 by adding paragraphs (c) through (e) to read as follows:

§ 1302.93 Staff Health and Wellness.

* * * * *

(c)(1) A program must provide:

(i) For each staff member working a shift lasting between four and six hours, a minimum of one 15-minute break per shift; and

(ii) For each staff member working a shift lasting six hours or more, a minimum of one 30-minute break per shift.

(2) If applicable State laws or regulations have more stringent requirements for breaks, a program should comply with the more stringent requirements.

(3) During break times for classroom staff described in paragraph (c)(1) of this section, one teaching staff member may be replaced by one staff member who does not meet the teaching qualifications required for the age, provided that this staff member has the necessary training and experience to ensure safety of children and minimal disruption to the quality of services.

(4) A program must design and implement a systematic approach to ensure each staff member that works directly with children as part of their regular job responsibilities can have access to brief unscheduled wellness breaks of about 5 minutes as needed while ensuring child safety.

(d) A program must ensure staff have access to adult size furniture in classrooms.

(e) A program should cultivate a program-wide culture of wellness that empowers staff as professionals and

supports staff to effectively accomplish their job responsibilities in a high-quality manner, in line with the requirement at § 1302.101(a)(2).

■ 44. Amend § 1302.94 by revising paragraph (a) to read as follows:

§ 1302.94 Volunteers.

(a) A program must ensure volunteers have been screened for appropriate communicable diseases in accordance with State, Tribal or local laws. In the absence of State, Tribal, or local law, the Health and Mental Health Services Advisory Committee must be consulted regarding the need for such screenings.

* * * * *

Subpart J—Program Management and Quality Improvement

■ 45. Amend § 1302.101 by revising paragraph (a)(2) and adding paragraph (a)(5) to read as follows:

§ 1302.101 Management System.

(a) * * *

(2) Promotes clear and reasonable roles and responsibilities for all staff and provides regular and ongoing staff supervision with meaningful and effective employee engagement practices.

* * * * *

(5) Ensures that all staff are trained to implement reporting procedures in § 1302.102(d)(1)(ii).

* * * * *

■ 46. Amend § 1302.102 by revising the section heading and paragraph (d)(1)(ii) and adding paragraph (d)(1)(iii) to read as follows:

§ 1302.102 Program Goals, Continuous Improvement, and Reporting.

* * * * *

(d) * * *

(1) * * *

(ii) Reports, as appropriate, to the responsible HHS official immediately or no later than 3 business days following the incident, related to:

(A) Any significant incident that affects the health, mental health, or safety of a child that occurs in a setting where Head Start services are provided and that involves:

(*1*) A staff member, contractor, volunteer, or other adult that participates in either a Head Start program or a classroom at least partially funded by Head Start, regardless of whether the child receives Head Start services; or

(*2*) A child that receives services fully or partially funded by Head Start or a child that participates in a classroom at least partially funded by Head Start; or

(B) Circumstances affecting the financial viability of the program; breaches of personally identifiable information, or program involvement in legal proceedings; any matter for which notification or a report to State, Tribal, or local authorities is required by applicable law.

(iii) Reportable incidents under paragraph (d)(1)(ii) of this section include at a minimum:

(A) Any mandated reports regarding agency staff or volunteer compliance with Federal, State, Tribal, or local laws addressing child abuse and neglect or laws governing sex offenders;

(B) Incidents that require classrooms or centers to be closed, except for circumstances such as natural disasters that interfere with program operations;

(C) Legal proceedings by any party that are directly related to program operations; and,

(D) All conditions required to be reported under § 1304.12 of this chapter, including disqualification from the Child and Adult Care Food Program (CACFP) and license revocation.

(E) Any suspected or known violations of Standards of Conduct under § 1302.90(c)(1)(ii);

(F) Significant health or safety incidents related to suspected or known lack of supervision or lack of preventative maintenance; and,

(G) Any unauthorized release of a child.

* * * * *

§ 1302.103 [Removed]

■ 47. Remove § 1302.103.

PART 1303—FINANCIAL AND ADMINISTRATIVE REQUIREMENTS

■ 48. The authority for part 1303 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

Subpart D—Delegation of Program Operations

■ 49. Revise § 1303.30 to read as follows:

§ 1303.30 Grant recipient responsibility and accountability.

A grant recipient is accountable for the services its delegate agencies provide. The grant recipient supports, oversees and ensures delegate agencies provide high-quality services to children and families and meet all applicable Head Start requirements. The grant recipient can only terminate a delegate agency if the grant recipient shows cause why termination is necessary and provides a process for delegate agencies to appeal termination decisions. The grant recipient retains legal responsibility and authority and bears financial accountability for the program when services are provided by delegate agencies.

Subpart E—Facilities

■ 50. Amend § 1303.44 by revising paragraph (a)(7) to read as follows:

§ 1303.44 Applications to purchase, construct, and renovate facilities.

(a) * * *

(7) An estimate by a licensed independent certified appraiser of the facility's cost value after proposed purchase and associated repairs and renovations, construction, or major renovation is completed is required for all facilities activities except for major renovations to leased property;

* * * * *

■ 51. Amend § 1303.48 by revising the section heading to read as follows:

§ 1303 Grant recipient limitations on Federal interest.

* * * * *

Subpart F—Transportation

■ 52. Amend § 1303.70 by revising paragraph (c)(1) introductory text to read as follows:

§ 1303.70 Purpose.

* * * * *

(c) * * *

(1) A program that provides transportation services must comply with all provisions in this subpart. A Head Start Preschool program may request to waive a specific requirement in this part, in writing, to the responsible HHS official, as part of an agency's annual application for financial assistance or amendment and must submit any required documentation the responsible HHS official deems necessary to support the waiver. The responsible HHS official is not authorized to waive any requirements with regard to children enrolled in an Early Head Start program. A program may request a waiver when:

* * * * *

■ 53. Amend § 1303.75 by revising paragraph (a) to read as follows:

§ 1303.75 Children with disabilities.

(a) A program must ensure there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based

option by the grant recipient. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start program.

* * * * *

PART 1303—[AMENDED]

■ 54. Further amend part 1303 by:
■ a. Removing the word ''grantee'' and adding the words ''grant recipient'' in its place wherever it appears;
■ b. Removing the word ''grantees'' and adding the words ''grant recipients'' in its place wherever it appears; and
■ c. Removing the word ''grantee's'' and adding the words ''grant recipient's'' in its place wherever it appears.

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

■ 55. The authority for part 1304 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and Their Appeals

§ 1304.5 [Amended]

■ 56. Amend § 1304.5 by removing the word ''Grantee's'' and adding in its place the words ''Grant recipient's'' in the paragraph (c) heading and removing the word ''grantees'' and adding in its place the words ''grant recipients'' paragraph (c)(1) and the paragraph (e) heading.

§ 1304.6 [Amended]

■ 57. Amend § 1304.6 by removing the word ''grantees'' and adding in its place the words ''grant recipients'' in the paragraph (c) heading.

Subpart B—Designation Renewal

■ 58. Revise § 1304.10 to read as follows:

§ 1304.10 Purpose and scope.

The purpose of this subpart is to set forth policies and procedures for the designation renewal of Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grant recipients be fully protected. The Designation Renewal System is established in this part to determine whether Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) or 645A(b)(12) and (d) of the Head Start Act. A competition to select a new Head Start agency to replace a Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this part, and is subject instead to the requirements of § 1304.20.

■ 59. Amend § 1304.11 by revising the introductory text and paragraphs (d) and (e) to read as follows:

§ 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

A Head Start agency will be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period under § 1304.15:

* * * * *

(d) An agency has had a revocation of its license to operate a Head Start center or program by a State or local licensing agency during the relevant time period under § 1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation will not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under § 1304.15 and the suspension has not been overturned or withdrawn. If the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under this part, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in place, the condition will be implemented.

* * * * *

■ 60. Amend § 1304.12 by revising the section heading to read as follows:

§ 1304.12 Grant recipient reporting requirements concerning certain conditions.

* * * * *

■ 61. Revise § 1304.13 to read as follows:

§ 1304.13 Requirements to be considered for designation for a five-year period when the existing grant recipient in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start program. The application must address the criteria for selection listed at section 641(d)(2)58 of the Act for Head Start. Any agency that has had its Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start agency that has had a denial of refunding, as defined in 45 CFR part 1305, in the preceding five years is also excluded from competing.

■ 62. Amend § 1304.14 by revising paragraphs (a) introductory text, (a)(2) and (3), (b), and (c) to read as follows:

§ 1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

(a) In the case of an Indian Head Start agency determined not to be delivering a high-quality and comprehensive Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program operated by the Indian Head Start agency.

* * * * *

(2) Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start agency.

(3) If the Indian Head Start agency is still not delivering a high-quality and comprehensive Head Start program, the responsible HHS official will conduct an open competition to select a grant recipient to provide services for the community currently being served by the Indian Head Start agency.

(b) A non-Indian Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start agency available for designation to carry out an Indian Head Start program.

(c) A non-Indian Head Start agency may receive a grant to carry out an

Indian Head Start program only until such time as an Indian Head Start agency in such community becomes available and is designated pursuant to this part.

■ 63. Amend § 1304.15 by revising paragraphs (a), (b), (c) introductory text, and (c)(1) to read as follows:

§ 1304.15 Designation request, review and notification process.

(a) A grant recipient must apply to be considered for Designation Renewal. A Head Start agency wishing to be considered to have its designation as a Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under § 1304.11 were met by the Head Start agency during the current project period.

(c) ACF will give notice to grant recipients on Designation Renewal System status, except as provided in § 1304.14, at least 12 months before the expiration date of a Head Start agency's current grant, stating:

(1) The Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

* * * * *

Subpart C—Selection of Grant Recipients through Competition

■ 64. Revise the heading for subpart C to read as set forth above.

■ 65. Amend § 1304.20 by revising paragraph (a) to read as follows:

§ 1304.20 Selection among applicants.

(a) In selecting an agency to be designated to provide Head Start Preschool, Early Head Start, Migrant or Seasonal Head Start or Tribal Head Start Preschool or Early Head Start services, the responsible HHS official will consider the applicable criteria at section 641(d) of the Head Start Act and any other criteria outlined in the funding opportunity announcement.

* * * * *

Subpart D—Replacement of American Indian and Alaska Native Grant Recipients

■ 66. Revise the heading for subpart D to read as set forth above.

PART 1304—[AMENDED]

■ 67. Further amend part 1304 by:
■ a. Removing the word ''grantee'' and adding the words ''grant recipient'' in its place wherever it appears; and
■ b. Removing the word ''grantees'' and adding the words ''grant recipients'' in its place wherever it appears; and

PART 1305—DEFINITIONS

■ 68. The authority for part 1305 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 69. Amend § 1305.2 by:
■ a. Adding in alphabetical order definitions for ''Abatement'' and ''Change to the water profile'';
■ b. Revising the definition of ''Continuity of care'';
■ c. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in the definition of ''Denial of Refunding'';
■ d. Adding in alphabetical order a definition for ''Early Head Start'';
■ e. Removing the definition of ''Early Head Start agency'';
■ f. Adding in alphabetical order a definition for ''Expulsion'';
■ g. Revising the definitions of ''Federal interest'', ''Fixed route'', and ''Full-working-day'';
■ h. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in the definition of ''Funded enrollment'';
■ i. Removing the definition of ''Grantee'';
■ j. Adding in alphabetical order definitions for ''Grant recipient'' and ''Head Start'';
■ k. Revising the definition of ''Head Start agency'';
■ l. Adding in alphabetical order definitions for ''Head Start Preschool'' and ''Housing expenses'';
■ m. Revising the definitions of ''Income'',
■ n. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in the definition of ''Legal status'';
■ o. Revising the definitions of ''Major renovation'' and ''Migrant family'';
■ p. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in the definition of ''Modular unit'';
■ q. Revising the definition of ''Participant'';
■ r. Adding in alphabetical order a definition for ''Poverty line'';
■ s. Revising the definitions of ''Program'' and ''Purchase'';
■ t. Removing the word ''grantee'' and adding in its place the words ''grant recipient'' in the definition of ''Service area'';
■ u. Adding in alphabetical order a definition for ''Suspension'';
■ v. Removing the word ''grantee's'' and adding in its place the words ''grant recipient's'' in the introductory text and paragraph (1) of the definition of ''Termination of a grant or delegate agency agreement'' and removing the word ''grantee'' and adding in its place the words ''grant recipient'' in introductory text of the definition of ''Termination of a great or delegate agency agreement'';
■ w. Removing the definition of ''Transition period'';
■ x. Revising the definition of ''Transportation services''; and
■ y. Adding in alphabetical order a definition for ''Water fixtures used for human consumption''.

The additions and revisions read as follows:

§ 1305.2 Terms.

Abatement means actions designed to eliminate lead-based paint or lead-based paint hazards. Abatement can include the:

(1) Removal of lead-based paint and dust-lead hazards, the enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and

(2) Preparation, cleanup, disposal, and post-abatement testing to determine the effectiveness of such measures.

* * * * *

Change to the water profile means change in source of water, water plumbing, or water fixture.

* * * * *

Continuity of care means Head Start services provided to children in a manner that promotes primary caregiving and minimizes the number of transitions in teachers and teacher assistants that children experience over the course of the day, week, program year, and to the extent possible, during the course of their participation from birth to age three in Early Head Start and in Head Start Preschool.

* * * * *

Early Head Start means a program that serves pregnant women and children from birth to age three, pursuant to section 645A(e) of the Head Start Act. This includes Tribal and migrant or seasonal programs.

Expulsion is the permanent removal of a child from the learning setting or a requirement that a child unenroll in a program.

* * * * *

Federal interest is a property right which secures the right of the Federal awarding agency to recover the current fair market value of its percentage of participation in the cost of the facility subject to part 1303, subpart E of this chapter funding in the event the facility is no longer used for Head Start purposes by the grant recipient or upon the disposition of the property. When a grant recipient uses Head Start funds to purchase, construct or make major renovations to a facility, or make mortgage payments, it creates a Federal interest. The Federal interest includes any portion of the cost of purchase, construction, or major renovation contributed by or for the entity, or a related donor organization, to satisfy a matching requirement.

* * * * *

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

* * * * *

Full-working-day means not less than 10 hours of Head Start services per day.

* * * * *

Grant recipient means the local public or private non-profit agency or for-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Head Start means any program authorized under the Head Start Act.

Head Start agency means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start Preschool program, an Early Head Start program, or Migrant or Seasonal Head Start program pursuant to the Head Start Act.

* * * * *

Head Start Preschool means a program that serves children aged three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act. This includes Tribal and migrant or seasonal programs.

* * * * *

Housing expenses means the total annual expenses spent by the family on rent or mortgage payments, homeowner's or renter's insurance, utilities, interest, and taxes on the home. Utilities include electricity, gas, water, sewer, and trash.

Income means gross income and only includes wages, business income, veteran's benefits, Social Security benefits, unemployment compensation, alimony, pension or annuity payments, gifts that exceed the threshold for taxable income, and military income (excluding special pay for a member subject to hostile fire or imminent danger under 37 U.S.C. 310 or any basic allowance for housing under 37 U.S.C. 403 including housing acquired under the alternative authority under 10 U.S.C. 169 or any related provision of law). Gross income only includes sources of income provided in this definition; it does not include refundable tax credits nor any forms of public assistance.

* * * * *

Major renovation means any individual or collective group of renovation activities related to the same facility that has a cost equal to or exceeding $250,000 in Head Start funds. Renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a collective group of renovation activities. Unless included in a purchase application, minor renovations and repairs are excluded from major renovations.

Migrant family means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work.

* * * * *

Participant means a pregnant woman or child who is enrolled in and receives services from a Head Start Preschool, an Early Head Start, a Migrant or Seasonal Head Start, or an American Indian and Alaska Native Head Start program.

* * * * *

Poverty line is set by the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). Poverty guidelines for the contiguous-states-and-DC apply to Puerto Rico and U.S. Territories.

Program means any funded Head Start Preschool, Early Head Start, Migrant or Seasonal Head Start, Tribal, or other program authorized under the Act and carried out by an agency, or delegate agency, to provide ongoing comprehensive child development services.

* * * * *

Purchase means to buy an existing facility, including outright purchase, down payment or through payments made in satisfaction of a mortgage or other loan agreement, whether principal, interest or an allocated portion principal and/or interest. The use of grant funds to make a payment under a finance lease agreement, as defined in the cost principles, is a purchase subject to these provisions. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities or refinance an existing loan or mortgage beginning in 1987.

* * * * *

Suspension is the temporary removal of a child from the learning setting including all reductions in the amount of time a child may be in attendance of the regular group setting, either by requiring the child to cease attendance for a particular period of time or reducing the number of days or amount of time that a child may attend. Requiring a child to attend the program away from the other children in the regular group setting is included in this definition. Requiring the parent or the parent's designee to pick up a child for reasons other than illness or injury is also included in this definition.

* * * * *

Transportation services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start grant recipient or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

* * * * *

Water fixtures used for human consumption means fixtures used for drinking, cooking, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112916–23]

RIN 1545–BQ90

Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis. The proposed regulations would provide guidance regarding this statutory disallowance rule, including definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, the three statutory exceptions to the statutory disallowance rule, and related reporting requirements. In addition, the proposed regulations would provide reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property). These proposed regulations would affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share, as applicable, of a noncash charitable contribution. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 20, 2023. The public hearing on these proposed regulations is scheduled to be held on January 3, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 20, 2023. If no outlines are received by December 20, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on December 29, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5 p.m. on December 28, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–112916–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted, whether electronically or on paper, to the IRS's public docket. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section.

Send paper submissions to: CC:PA:01:PR (REG–112916–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under §§ 1.170A–14, 1.706–3, and 1.706–4, contact Benjamin Weaver at (202) 317–6850 (not a toll-free number); concerning the proposed regulations under § 1.170A–16 and issues regarding section 170 other than section 170(h)(7), contact Elizabeth Boone at (202) 317–5100 and Hannah Kim at (202) 317–7003 (not toll-free numbers); and concerning submissions of comments and requests for a public hearing, contact Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed regulations that would amend the Income Tax Regulations (26 CFR part 1) under sections 170 and 706 of the Internal Revenue Code (Code) to implement the provisions of section 605(a) and (b) of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459, 5393 (December 29, 2022), which apply to contributions of property made after December 29, 2022.

II. Charitable Contribution Deductions

Section 170(a) provides, subject to certain limitations and requirements, a deduction for any charitable contribution, as defined in section 170(c), of cash or other property the payment of which is made within the taxable year. Section 170(f) disallows charitable contribution deductions in certain cases and provides special rules. Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer's entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust. Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution (discussed in part III of this Background section).

Section 170(f)(11) requires a qualified appraisal and other documentation for a charitable contribution deduction to be allowed with respect to certain contributions of property. Section 170(f)(11) also includes special rules for contributions of property other than cash (noncash charitable contributions) of more than $5,000 and for noncash charitable contributions of more than $500,000. In addition, section 170(f)(11)(H) provides that the Secretary of the Treasury or her delegate (Secretary) may prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 170(f)(11). Section 6001 provides that every person liable for any tax imposed by title 26, United States Code (title 26) must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. In addition, section 6011 provides, in part, that, whenever required by regulations prescribed by the Secretary, any person made liable for any tax imposed by title 26 must make a return or statement according to the forms and regulations prescribed by the Secretary and include therein the information required by such forms or regulations. Under the authority of sections 170(f)(11)(H), 6001, and 6011, existing regulations under § 1.170A–16 provide substantiation and reporting requirements that must be satisfied for a deduction to be allowed under section 170 with respect to noncash charitable contributions.

III. Qualified Conservation Contributions

Section 170(h)(1) provides that, in general, for purposes of section 170(f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes. Section 170(h)(2) defines the term ''qualified real property interest,'' section 170(h)(3) defines the term ''qualified organization,'' section 170(h)(4) defines the term ''conservation purpose,'' and section 170(h)(5) defines the term ''exclusively for conservation purposes.'' In general, a qualified conservation contribution may include a contribution of a conservation easement.

The existing regulations under § 1.170A–14 provide rules for qualified conservation contributions described in section 170(h). Consistent with section 170(f)(3), § 1.170A–14(a) provides that a deduction under section 170 generally is not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust. However, by reason of section 170(f)(3)(B)(iii), a deduction may be allowed for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met. To be eligible for a deduction under § 1.170A–14, the conservation purpose of the contribution must be protected in perpetuity. *See* § 1.170A–14(a) and (g).

IV. Syndicated Conservation Easement Transactions

On December 23, 2016, the Treasury Department and the IRS released Notice 2017–10, 2017–4 I.R.B. 544, which identified transactions that are the same as or substantially similar to certain syndicated conservation easement transactions as ''listed transactions'' under § 1.6011–4 subject to certain disclosure and list maintenance requirements. Notice 2017–10 explains that the Treasury Department and the IRS are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amounts invested. In addition, Notice 2017–10 provides that a transaction is a listed transaction if (1) an investor receives promotional materials that offer a prospective investor in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the investor's investment, (2) the investor purchases an interest directly or indirectly (through one or more tiers of pass-through entities) in the pass-through entity that holds real property, (3) the pass-through entity contributes a conservation easement and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution to the investor, and (4) the investor reports on the investor's Federal income tax return a charitable contribution deduction with respect to the conservation easement.

Congress continued to be concerned about abusive syndicated conservation easement transactions even after Notice 2017–10 was issued, and the transactions were the subject of an investigation by the U.S. Senate Committee on Finance, which issued a report on August 25, 2020. S. Committee on Finance, Comm. Print 116–44, *Syndicated Conservation-Easement Transactions,* 116th Cong., 2nd Sess. (2020) (Committee Report). The Committee Report found that the syndicated conservation easement transactions examined were nothing more than retail tax shelters allowing taxpayers to buy tax deductions at the end of any given tax year. *Id.* at 3. The Committee Report further stated that these tax deductions could be purchased with no economic risk. *Id.* As such, the Finance Committee concluded that further action was necessary to preserve the integrity of the conservation easement tax deduction despite ongoing efforts to combat this abuse such as the issuance of Notice 2017–10 and IRS enforcement action. *Id.* at 4.

In a separate report accompanying an earlier proposal for amending section 170(h), in legislation proposed as the ''Enhancing American Retirement Now Act,'' the Committee on Finance recognized charitable deductions for the donation of conservation easements as an important tool and incentive to protect the environment and historic structures. S. Rep. No. 117–142 on S. 4808, at 218, 117th Cong., 2nd Sess. (2022). Citing its findings from the 2020 Committee Report, the Committee noted, however, that abusive tax shelter transactions put the conservation easement tax deduction at risk. The Committee ultimately found it appropriate to take legislative action to protect the integrity of the conservation easement tax deduction for easement donations with a legitimate conservation purpose. *Id.*

On December 8, 2022, the Treasury Department and the IRS published in the **Federal Register** (87 FR 75185) a notice of proposed rulemaking (REG–106134–22) identifying syndicated conservation easement transactions and substantially similar transactions as listed transactions (listing NPRM). The definition of a syndicated conservation easement transaction in proposed § 1.6011–9 of the listing NPRM is similar to the definition in Notice 2017–10. The purpose of the listing NPRM was to eliminate any confusion and ensure consistent enforcement of Federal tax laws throughout the nation in light of certain judicial decisions holding that, under the Administrative Procedure Act, 5 U.S.C. chapter 5, subchapter II, listed transactions may be identified only after following notice and comment procedures. *See, e.g., Mann Construction, Inc.* v. *United States,* 27 F.4th 1138 (6th Cir. 2022), and *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (2022). The Treasury Department and the IRS are in the process of considering the comments received and finalizing the listing NPRM.

V. Section 605 of the SECURE 2.0 Act

Section 170(h)(7) was added to the Code by section 605(a)(1) of the SECURE 2.0 Act. Section 170(h)(7)(A) states that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership (Disallowance Rule). Thus, a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes is not a qualified conservation contribution if the Disallowance Rule applies. Section 170(h)(7)(F) provides that the rules of section 170(h)(7) ''apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships'' except as the Secretary may otherwise provide.

Section 170(h)(7)(B) defines the terms ''relevant basis'' and ''modified basis,'' section 170(h)(7)(C), (D), and (E) provide three exceptions to the Disallowance Rule, and section 170(h)(7)(G) provides a specific grant of regulatory authority to the Secretary to issue regulations or other guidance as the Secretary determines are necessary or appropriate to carry out the purposes of the Disallowance Rule, including reporting requirements and rules to prevent the avoidance of the Disallowance Rule.

Section 605(a)(2) of the SECURE 2.0 Act modifies certain penalty provisions in sections 6662, 6664, and 6751 of the Code to provide special rules for

charitable contribution deductions disallowed by section 170(h)(7). Section 605(a)(3) of the SECURE 2.0 Act provides that any charitable contribution for which a deduction was disallowed under section 170(h)(7) is treated, for purposes of the period of limitations on assessment and collection of tax in section 6501 of the Code and the period of limitations on making adjustments in section 6235 of the Code, as a transaction specifically identified by the Secretary as a tax-avoidance transaction.

Section 605(b) of the SECURE 2.0 Act added section 170(f)(19) to the Code, which provides that, in the case of a partnership or S corporation claiming a qualified conservation contribution for the preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)) in an amount that exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis (as defined in section 170(h)(7)), no deduction under section 170 is allowed unless, as provided in section 170(f)(19)(A)(i) and (ii), the partnership or S corporation includes on its return for the taxable year a statement that such contribution was made and any other information as the Secretary may require. A contribution to preserve a certified historic structure is one of the three exceptions to the Disallowance Rule.

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022, and that no inference is intended as to the appropriate treatment of contributions made in taxable years ending on or before that date, or as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7).

VI. Overview of the Disallowance Rule

The Disallowance Rule provides that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership. If such a contribution is not treated as a qualified conservation contribution, then the general rule under section 170(f)(3)(A) disallowing a charitable contribution deduction under section 170 for a contribution of a partial interest in property applies. Thus, if the Disallowance Rule applies, any amount of deduction under section 170 for a qualified conservation contribution is disallowed.

Section 170(h)(7)(B)(i) provides that, for purposes of section 170(h)(7), the term ''relevant basis'' means, with respect to any partner, the portion of such partner's modified basis in the partnership that is allocable (under rules similar to the rules of section 755 of the Code for allocating certain special basis adjustments to partnership property) to the portion of the real property with respect to which the contribution described in section 170(h)(7)(A) is made. Section 170(h)(7)(B)(ii) provides that, for purposes of section 170(h)(7), the term ''modified basis'' means, with respect to any partner, such partner's adjusted basis in the partnership as determined (1) immediately before the contribution described in section 170(h)(7)(A), (2) without regard to the treatment of partnership liabilities in section 752, and (3) by the partnership after taking into account these first two adjustments and such other adjustments as the Secretary may provide.

Section 170(h)(7) contains three exceptions to the Disallowance Rule. First, section 170(h)(7)(C) provides that the Disallowance Rule does not apply to any contribution made at least three years after the latest of (1) the last date on which the partnership that made such contribution acquired any portion of the real property with respect to which such contribution is made, (2) the last date on which any partner in the partnership that made such contribution acquired any interest in such partnership, and (3) if the interest in the partnership that made such contribution is held through one or more partnerships, the last date on which any such partnership acquired any interest in any other such partnership, and the last date on which any partner in any such partnership acquired any interest in such partnership.

Second, section 170(h)(7)(D)(i) provides that the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. Section 170(h)(7)(D)(ii) provides that, for purposes of section 170(h)(7)(D), the term ''members of the family'' means, with respect to any individual (I) the spouse of such individual, and (II) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code for purposes of determining whether an individual is a qualifying relative.

Third, section 170(h)(7)(E) provides that the Disallowance Rule does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)).

Section 170(h)(7)(F) provides that, except as may be otherwise provided by the Secretary, the rules of section 170(h)(7) apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships.

Section 170(h)(7)(G) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 170(h)(7), including regulations or other guidance (1) to require reporting, including reporting related to tiered partnerships and the modified basis of partners, and (2) to prevent the avoidance of the purposes of section 170(h)(7).

Explanation of Provisions

I. Overview

These proposed regulations would address several requirements added by section 605 of the SECURE 2.0 Act and make several related clarifying changes to the existing regulations applicable to qualified charitable contributions. First, these proposed regulations would make changes to existing § 1.170A–14, including modifying paragraph (a) to reference the Disallowance Rule and adding new paragraphs (j) through (n) to § 1.170A–14 to provide guidance on the application of the Disallowance Rule to partnerships and S corporations, the computation of relevant basis and modified basis, including in tiered structures, and the three statutory exceptions to the Disallowance Rule.

These proposed regulations would provide specific rules for partnerships and S corporations, but do not specifically address other types of pass-through entities. The Treasury Department and the IRS continue to study whether specific rules are needed for other types of pass-through entities and request comments on the application of section 170(f)(19) and (h)(7) to pass-through entities other than partnerships and S corporations. The Treasury Department and the IRS intend to issue future guidance on other issues relating to section 605 of SECURE 2.0 Act, including additional guidance relating to the three statutory exceptions to the Disallowance Rule.

Second, these proposed regulations would make changes to the reporting requirements in § 1.170A–16 to address

substantiation of charitable contribution deductions as well as to implement section 170(f)(19)(A)(i). The Treasury Department and the IRS intend to issue future guidance addressing section 170(f)(19)(A)(ii).

Finally, these proposed regulations propose new language in §§ 1.706–3 and 1.706–4 to facilitate the operation of the Disallowance Rule in the case of a qualified conservation contribution made by a partnership.

II. Clarifying Change to § 1.170A–14(a)

The second sentence of existing § 1.170A–14(a) provides that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met. Because the Disallowance Rule provided in section 170(h)(7) is proposed to be contained in § 1.170A–14(j) through (n), proposed § 1.170A–14(a) would amend this sentence to provide that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met and the contribution is not a disallowed qualified conservation contribution within the meaning of proposed § 1.170A–14(j).

III. Disallowance Rule and Its Exceptions

Proposed § 1.170A–14(j) would provide guidance on the general applicability of the Disallowance Rule to partnerships and S corporations. Proposed § 1.170A–14(j)(3) would provide definitions. Consistent with section 170(h)(7)(B), proposed § 1.170A–14(k) would provide that the term ''relevant basis'' means, with respect to any ultimate member (as defined in proposed § 1.170A–14(j)(3)(x)), the portion of such ultimate member's modified basis (as determined under proposed § 1.170A–14(l)) that is allocable (under the rules of proposed § 1.170A–14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made. Proposed § 1.170A–14(l) would provide guidance on the determination of modified basis. Proposed § 1.170A–14(m) would provide guidance on the allocation of modified basis to the portion of the real property with respect to which the qualified conservation contribution was made. Proposed § 1.170A–14(m)(6) would impose recordkeeping requirements for substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis by the due date, including extensions, of the partnership's or S corporation's Federal income tax return. Proposed § 1.170A–14(n) would provide guidance on the three statutory exceptions to the Disallowance Rule.

A. General Disallowance Rule for Partnerships and S Corporations

Consistent with section 170(h)(7)(A), proposed § 1.170A–14(j)(1) would provide that proposed § 1.170A–14(j) applies the rules of section 170(h)(7), which disallow a deduction under the Code and § 1.170A–14 for certain qualified conservation contributions, as defined in section 170(h)(1) and § 1.170A–14, made by, or allocated to, partnerships or S corporations if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by proposed § 1.170A–14(j) through (m). Proposed § 1.170A–14(j)(3)(vii) would define a contribution for which a deduction is disallowed by § 1.170A–14(j) as a ''disallowed qualified conservation contribution.'' Proposed § 1.170A–14(j)(2)(i) would provide that, except as provided in proposed § 1.170A–14(n), a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined under proposed § 1.170A–14(j) through (m).

Proposed § 1.170A–14(j)(2)(ii) would provide that, except as provided in proposed § 1.170A–14(n), an allocated portion of a contribution received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis as determined under proposed § 1.170A–14(j) through (m). Thus, if a contribution is a disallowed qualified conservation contribution with respect to a partnership, then the contribution is a disallowed qualified conservation contribution with respect to any upper-tier partnership or upper-tier S corporation owning a direct or indirect interest in that partnership. On the other hand, if a contribution is not a disallowed qualified conservation contribution with respect to a partnership, then the rules of proposed § 1.170A–14(j) through (m) must be applied to the next tier of upper-tier partnerships and upper-tier S corporations (which own a direct interest in the partnership) to determine if the Disallowance Rule applies to those upper-tier partnerships and upper-tier S corporations. In other words, the test of § 1.170A–14(j) through (m) must be applied at each tier unless and until the test is failed at one tier, in which case that portion of the contribution will be a disallowed qualified conservation contribution to that tier and any subsequent tiers.

B. Definitions

Proposed § 1.170A–14(j)(3) would contain definitions, including definitions of terms, including ''contributing partnership,'' ''contributing S corporation,'' ''ultimate member,'' ''allocated portion,'' ''upper-tier partnership,'' and ''upper-tier S corporation.''

1. Allocated Portion

Proposed § 1.170A–14(j)(3)(i) would provide that, in the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase ''allocated portion'' means the amount of such distributive share.

2. Amount of Qualified Conservation Contribution

Proposed § 1.170A–14(j)(3)(ii) would provide that the amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. It would also provide that, if the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of § 1.170A–14 must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and § 1.170A–14.

3. Contributing Partnership

The Disallowance Rule applies to a partnership or S corporation that makes a qualified conservation contribution, as well as a partnership or S corporation that is allocated a distributive share of a qualified conservation contribution of

another partnership. For clarity, proposed § 1.170A–14(j)(3)(iii) would provide that the term ''contributing partnership'' means a partnership that makes a qualified conservation contribution.

4. Contributing S Corporation

Proposed § 1.170A–14(j)(3)(iv) would provide that the term ''contributing S corporation'' means an S corporation that makes a qualified conservation contribution.

5. Direct Interest

Proposed § 1.170A–14(j)(3)(v) would provide that the term ''direct interest'' refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3) of the Code, or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation, non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the direct interest in the partnership or S corporation, as applicable, would be considered to be held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries would not be considered to hold any interest in the partnership or S corporation, as applicable, for purposes of proposed § 1.170A–14(j) through (n).

6. Directly

Proposed § 1.170A–14(j)(3)(vi) would provide that an ownership interest is held ''directly'' if it is not held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received ''directly'' if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

7. Disallowed Qualified Conservation Contribution

Proposed § 1.170A–14(j)(3)(vii) would provide that the term ''disallowed qualified conservation contribution'' means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and proposed § 1.170A–14(j).

8. Indirect Interest

Proposed § 1.170A–14(j)(3)(viii) would provide that the term ''indirect interest'' refers to an ownership interest in a contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

9. Indirectly

Proposed § 1.170A–14(j)(3)(ix) would provide that an ownership interest is held ''indirectly'' if it is held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received ''indirectly'' if it passes through one or more upper-tier partnerships or upper-tier S corporations.

10. Ultimate Member

Proposed § 1.170A–14(j)(3)(x) would provide that the term ''ultimate member'' means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members would either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Proposed § 1.170A–14(j)(3)(x) would provide that upper-tier S corporations and upper-tier partnerships themselves are not considered ultimate members.

Several considerations played a role in the decision of the Treasury Department and the IRS to propose this rule that looks to the relevant basis of the ultimate members for determining whether a qualified conservation contribution will be disallowed. Although section 170(h)(7)(A) provides that the Disallowance Rule applies in tiered structures, the statutory language does not explicitly explain whether the determination of relevant basis is made with respect to partners (who may themselves be pass-through entities) and S corporation shareholders holding a direct interest in the contributing partnership or contributing S corporation, or whether the determination of relevant basis is made with respect to the ultimate members. The Disallowance Rule is meant to compare the amount of a claimed qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution. Because it is the ultimate members, such as individuals, estates, and C corporations (that is, non-pass-through entities), who ultimately claim a deduction for a qualified conservation contribution, the proposed regulations would require that the determination of relevant basis be made with respect to those ultimate partners and S corporation shareholders. For example, assume a contributing partnership has two partners: (1) an upper-tier S corporation, which has two individual shareholders, and (2) an upper-tier partnership, which has three partners—a C corporation, an estate, and an individual. Under these proposed regulations, relevant basis would be computed with respect to the three individuals, C corporation, and estate, and not with respect to the upper-tier S corporation or upper-tier partnership. The proposed regulations would refer to these persons as the ''ultimate members.'' In the case of a tiered arrangement, the use of the term ''partner'' to refer to such ultimate members might be confusing or inaccurate because such persons may not be partners of the contributing partnership, and in fact, may not be partners at all, if they are shareholders of an upper-tier S corporation that is itself a partner in the contributing partnership. As such, the proposed regulations use the term ''member.''

The Treasury Department and the IRS considered alternatives to the ultimate member rule. One possible approach would be to determine the application of the Disallowance Rule with respect to the contributing partnership by looking only to the relevant bases of the contributing partnership's direct partners. In the example in which a contributing partnership has two partners, an upper-tier S corporation and an upper-tier partnership, the direct partners would be the upper-tier S corporation and the upper-tier partnership. The modified basis (and thus, relevant basis) of the upper-tier S corporation or upper-tier partnership could include basis attributable to shareholders or partners of the upper-tier entity that will not be expected to claim the deduction. For example, this might be the case because the contributing partnership allocates all of the qualified conservation contribution to the upper-tier S corporation. Because the Disallowance Rule is meant to compare the amount of a claimed

qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution, it is more consistent with the purposes of the Disallowance Rule to compute relevant basis only using the basis of those persons who are expected to claim a deduction with respect to the contribution.

Additionally, in the example earlier, if the contributing partnership's qualified conservation contribution was not disallowed by the Disallowance Rule, the upper-tier S corporation and the upper-tier partnership would each be required to determine the application of the Disallowance Rule by looking to their direct owners. Because section 170(h)(7)(B)(i) requires that relevant basis be traced to the portion of the real property with respect to which the contribution is made, the upper-tier S corporation's and upper-tier partnership's determinations would necessarily involve computations by both the upper-tier entity and the contributing partnership. Thus, in many cases, computing relevant basis only with respect to direct partners would not simplify the computations required to apply the Disallowance Rule, because it would still be necessary to carry the computations through each tier.

These proposed regulations would provide numerous examples to determine who is an ultimate member. Comments are requested on the definition of ultimate member, and whether additional examples for specific situations would be helpful.

11. Upper-Tier Partnership

Proposed § 1.170A–14(j)(3)(xi) would provide that the term ''upper-tier partnership'' means a partnership that receives an allocated portion.

Where appropriate, the proposed regulations would provide separate rules for contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations. The Treasury Department and the IRS are aware that sometimes different naming conventions are used to refer to tiered partnership arrangements. For example, some may refer to the contributing partnership as the ''property partnership'' or ''top-tier partnership,'' and in fact the IRS has used that naming convention in some correspondence. That naming convention is not inherently wrong, as different practitioners refer to the ''bottom'' and ''top'' of a tiered structure differently. However, the regulations under subchapter K of chapter 1 of the Code generally would refer to the contributing partnership as the lower-tier partnership, and to a partnership that owns an interest in the contributing partnership (either directly or indirectly) as an upper-tier partnership. Accordingly, in a tiered partnership ownership structure, these proposed regulations reflect a naming convention under which the contributing partnership would be the ''lower-tier partnership,'' and a partnership receiving a distributive share of a qualified conservation contribution from the contributing partnership would be an ''upper-tier partnership.''

12. Upper-Tier S Corporation

Proposed § 1.170A–14(j)(3)(xii) would provide that the term ''upper-tier S corporation'' means an S corporation that receives an allocated portion.

C. Effect of the Disallowance Rule

As noted previously, section 170(h)(7)(A) applies the Disallowance Rule to both contributing partnerships and upper-tier partnerships. Section 170(h)(7) does not explicitly address what effect the application of the Disallowance Rule to one partnership or S corporation in a tiered structure has on the other partnerships or S corporations in the tiered structure. These proposed regulations would provide that if the Disallowance Rule applies to a partnership or S corporation, then the qualified conservation contribution is a disallowed qualified conservation contribution to that entity as well as to any person receiving a distributive share or pro rata share, directly or indirectly, of that entity's disallowed qualified conservation contribution; however, the disallowance would not affect the qualified conservation contribution with respect to any lower-tier entities. In other words, if the application of the Disallowance Rule with respect to an upper-tier partnership or upper-tier S corporation results in a disallowed qualified conservation contribution, that would affect Federal income tax consequences up the chain of tiers, but not down the chain of tiers, so, for example, the contributing partnership would not be affected.

The Treasury Department and the IRS considered other approaches, such as always re-testing the application of the Disallowance Rule to an upper-tier partnership's or upper-tier S corporation's allocated portion, even when the contribution is a disallowed qualified conservation contribution with respect to the lower-tier partnership. Under this approach, if the allocated portion does not exceed 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis, the allocated portion would be a qualified conservation contribution and not disallowed to the upper-tier partnership's non-pass-through partners or the upper-tier S corporation's shareholders, even though the contribution was a disallowed qualified conservation contribution to the non-pass-through partners of the lower-tier partnership. Allowing re-testing of contributions that have already failed the Disallowance Rule would be inconsistent with the purposes of the Disallowance Rule because it would inappropriately encourage the creation of tiered structures to allow some ultimate members to avoid the Disallowance Rule. These proposed regulations are intended to prevent avoidance of the purposes of section 170(h)(7) and ensure disallowance of deductions attributable to disallowed qualified conservation contributions. The Treasury Department and the IRS request comments on the application of the Disallowance Rule in tiered structures.

Under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7), proposed § 1.170A–14(j)(4)(i) would provide that, if a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution, then: (1) any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis. The reference to ''any provision of the Code'' is necessary to prevent taxpayer attempts to avoid the Disallowance Rule by claiming a deduction with respect to any amount of a qualified conservation contribution under a provision of the Code other than section 170 in cases in which no deduction is allowable under section 170 by reason of section 170(h)(7). For example, this proposed

rule would disallow a deduction under section 642(c) of the Code for a trust that is a partner in a partnership with respect to a distributive share of a disallowed qualified conservation contribution from the partnership.

Proposed § 1.170A–14(j)(4)(ii) would provide that if a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and (2) any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and proposed § 1.170A–14(j) through (m) to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

Proposed § 1.170A–14(j)(4)(iii) would provide that, if an upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution, then: (1) any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion would be a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of the subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation) would be able to claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. Similar to proposed § 1.170A–14(j)(4)(i), proposed § 1.170A–14(j)(4)(iii) would be issued under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). However, this proposed rule would not affect the application of proposed § 1.170A–14(j) through (m) to another partner of the contributing partnership; for example, if the qualified conservation contribution is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

Proposed § 1.170A–14(j)(4)(iv) would provide that, if an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and (2) any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and proposed § 1.170A–14(j) through (m) to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

The proposed regulations contain examples illustrating the rules with respect to tiers of entities. The Treasury Department and the IRS request comments on whether additional examples would be helpful.

D. No Inference

The Treasury Department and the IRS are aware that, even though section 605(c)(2) of the SECURE 2.0 Act plainly states that no inference is intended as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7), some practitioners have taken the position that section 170(h)(7) operates as a ''safe harbor.'' According to these practitioners, a qualified conservation contribution that is not disallowed by the Disallowance Rule is somehow immune to a challenge on other grounds, including failure to comply with other rules under section 170 and overvaluation of the contribution. Such a position is baseless and contradicted by the statutory language.

To clarify this issue, proposed § 1.170A–14(j)(5) would provide that there is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution is compliant with section 170, any other section of the Code, the regulations, or any other guidance thereunder. It would also provide that compliance with section 170(h)(7) and proposed § 1.170A–14(j) through (n) is not a safe harbor for purposes of any other provision of law, including the other requirements of section 170 and the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the requirements of section 170 and the overvaluation of the contribution; for example, failure to properly execute Form 8283, *Noncash Charitable Contributions,* violation of the partnership anti-abuse rule of § 1.701–2, lack of economic substance, or other rules or judicial doctrines. In addition, compliance with proposed § 1.170A–14(j) through (n) would not preclude the application of any penalty, including penalties for valuation misstatement, negligence, and fraud. Proposed § 1.170A–14(j)(5) would also provide that taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

E. Determination of Relevant Basis

Consistent with section 170(h)(7)(B)(i), proposed § 1.170A–14(k) would provide that, for purposes of § 1.170A–14, the term ''relevant basis'' means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as defined in proposed § 1.170A–14(l)) that is allocable (under the rules of proposed § 1.170A–14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made.

1. Modified Basis

Proposed § 1.170A–14(l)(1) would provide that, in the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in § 1.170A–14(l)(2). In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis would be determined by such S corporation in the manner described in § 1.170A–14(l)(3).

a. Modified Basis of Ultimate Members That Are Partners

Consistent with section 170(h)(7)(B)(ii), the proposed regulations would provide rules that are designed to determine a partner's

modified basis immediately prior to the qualified conservation contribution. Without additional guidance under section 706, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the qualified conservation contribution. Such partners would not have any bases in their partnership interests immediately before the contribution, and thus, without additional rules, their modified bases and relevant bases would be zero. As discussed later in this preamble, these proposed regulations would contain rules under section 706 that would treat a qualified conservation contribution as an extraordinary item under § 1.706–4(e) that must be allocated only to partners holding an interest in the partnership at the time of the contribution. Proposed rules under § 1.706–3 would ensure that only partners holding an interest in an upper-tier partnership at the time of the contribution would receive a distributive share of an allocated portion. Thus, all ultimate members who are partners would be partners at the time of day the contribution is made. In other words, for a partner to be an ultimate member, the partner must have been a partner at the time of day the contribution is made and must have been allocated a distributive share of that contribution. These proposed rules are intended to facilitate the computation of modified basis immediately before the contribution, consistent with section 170(h)(7)(B)(ii)(I).

The proposed regulations would provide a process for determining a partner's modified basis. Proposed § 1.170A–14(l)(2)(i) would provide that, for purposes of § 1.170A–14, the term ''modified basis'' means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed § 1.170A–14(l)(2)(ii) through (v). However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year, then the term ''modified basis'' would mean such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner with adjustments as determined under proposed § 1.170A–14(l)(2)(ii) through (v). The Treasury Department and the IRS considered alternatives to this rule, including simply requiring that ''adjusted basis'' be computed immediately prior to the contribution. However, adjusted basis is typically computed as of the beginning of a taxable year, and it may be unclear to taxpayers how to compute adjusted basis as of another time during the year. Current regulations generally do not require partners to compute their adjusted bases in their partnership interests as of the time events, such as the making of a qualified conservation contribution, occur. Accordingly, these proposed regulations would start with a calculation of adjusted basis that partners are familiar with computing, and then make adjustments to arrive at an amount that reflects the partner's modified basis immediately before the contribution.

Proposed § 1.170A–14(l)(2)(ii) through (v) would provide four adjustments that must be made to a partner's adjusted basis to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed § 1.170A–14(l)(2)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed § 1.170A–14(l)(2)(i) and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

Second, proposed § 1.170A–14(l)(2)(iii) would provide that the amount determined under proposed § 1.170A–14(l)(2)(ii) must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. For example, if a calendar-year partnership makes a qualified conservation contribution at 9:17 a.m. on November 19 of Year 1, then the hypothetical distributive share would be required to be made based on the partnership items attributable to the period between the beginning of the day on January 1 Year 1 and 9:16 a.m. on November 19 Year 1. In making this determination, the partnership would be required to apply the rules of § 1.706–4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. Proposed § 1.170A–14(l)(2)(iii) would provide that the partnership cannot apply any convention in § 1.706–4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. Proposed § 1.170A–14(l)(2)(iii) would clarify that this hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. Proposed § 1.170A–14(l)(2)(iii) would also make clear that proposed § 1.170A–14(l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares for the taxable year in which the qualified conservation contribution is made or otherwise. *See* section 706(d) and the regulations thereunder for the permissible methods that may be used in the determination of the partners' distributive shares for a partnership taxable year in which there is a variation in a partner's interest in the partnership. As described later this preamble, proposed §§ 1.706–3(a) and 1.706–4(e)(2)(ix) would provide special rules for the allocation of qualified conservation contributions.

The Treasury Department and the IRS considered using the partners' actual distributive shares, determined as of the time of the contribution. In the case of a partnership using the proration method, however, such an approach would result in the partners' modified bases reflecting a portion of partnership items earned or incurred by the partnership after the time of the contribution, and thus would be inconsistent with the requirement in section 170(h)(7)(B)(ii)(I) that partners' modified bases be determined immediately before the contribution. The Treasury Department and the IRS request comments on the approach taken in the proposed regulations to determine the partners' distributive shares of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the

qualified conservation contribution is made.

Third, proposed § 1.170A–14(l)(2)(iv) would provide that the amount determined under proposed § 1.170A–14(l)(2)(iii) must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

Fourth, consistent with section 170(h)(7)(B)(ii)(II), proposed § 1.170A–14(l)(2)(v) would provide that the amount determined under proposed § 1.170A–14(l)(2)(iv) must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount would be such ultimate member's modified basis. Thus, under the proposed regulations, an ultimate member's modified basis may be less than zero. Under the formulas for the determination of relevant basis discussed later in this preamble, a negative modified basis will result in a negative relevant basis. Because the application of the Disallowance Rule is based on the sum of each ultimate member's relevant basis, if one ultimate member's relevant basis is negative, it will be added to all other ultimate members' relevant bases, and the sum may be a positive or negative number.

b. Modified Basis of Ultimate Members That Are Shareholders in an S Corporation

Unlike the rules for partnerships discussed previously, S corporations do not have extraordinary items that must be allocated only to shareholders as of the time of day the item occurs. Instead, section 1377 of the Code and existing § 1.1377–1 generally require pro rata allocations. Section 1.1377–1(a) provides that each shareholder's pro rata share of any S corporation item described in section 1366(a) of the Code for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. If a shareholder disposes of its entire interest in an S corporation, § 1.1377–1(b) allows the S corporation to make a terminating election, under which the S corporation will determine the terminating shareholder's share as though the S corporation's taxable year closed on the day of the termination. However, there is no extraordinary item rule for S corporations similar to § 1.706–4(e). As such, it may be the case that an S corporation allocates a portion of a qualified conservation contribution to someone that was not a shareholder at the time of the contribution, but that shareholder would still be treated as an ultimate member because the shareholder received a pro rata share of the qualified conservation contribution.

As described previously, the rules for determining a partner's modified basis start with the partner's adjusted basis at the start of the partnership's taxable year and work forward to determine modified basis immediately before the contribution. However, the Treasury Department and the IRS are concerned that such an approach is not appropriate for S corporation shareholders, as it could be unnecessarily burdensome and, in some cases, impossible to determine each shareholder's modified basis immediately prior to the qualified conservation contribution (because some ultimate members may not be shareholders at the time of the contribution). To provide an administrable standard consistent with the purposes of section 170(h)(7), these proposed regulations would require the computation of an S corporation shareholder's modified basis under an approach that is similar in purpose to the approach for partners but different in application.

Proposed § 1.170A–14(l)(3)(i) would provide that, for purposes of § 1.170A–14, the term ''modified basis'' means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii). However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term ''modified basis'' would mean such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii).

The Treasury Department and the IRS considered several alternatives to this rule. One method would be to require a determination of a portion of modified basis for every day during the S corporation's taxable year, because S corporations generally allocate the contribution on a pro rata basis among the shareholders on each day of the taxable year. These proposed regulations do not take that approach because the Treasury Department and the IRS are concerned that such an approach, although technically accurate and consistent with the purposes of section 170(h)(7), would be too burdensome for taxpayers and difficult for the IRS to administer. The Treasury Department and the IRS also considered using the shareholders' adjusted bases as of the beginning of the S corporation's taxable year (rather than as of the end of the year). However, because qualified conservation contributions are typically made in the second half of the year, especially in syndicated transactions, the Treasury Department and the IRS determined that such an approach would be less accurate than using the shareholders' adjusted bases as of the end of the year (or a shareholder's adjusted basis immediately prior to the transaction that terminated their interest in the S corporation).

Proposed § 1.170A–14(l)(3)(i) would also clarify that modified basis does not include the ultimate member's adjusted basis of any indebtedness of the S corporation to the ultimate member.[1]

Proposed § 1.170A–14(l)(3)(ii) and (iii) would provide two adjustments that must be made to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed § 1.170A–14(l)(3)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed § 1.170A–14(l)(3)(i) and then must reflect an increase for the extent to which the adjusted basis reflects a reduction as a result of the qualified

[1] As described previously, section 170(h)(7)(B)(ii)(II) provides that the determination of modified basis is to be made without regard to section 752. However, the Code does not contain a rule substantially similar to section 752 for S corporations. Unlike a partner's basis in the partner's interest in the partnership, an S corporation shareholder's basis in stock of the S corporation does not include any share of the S corporation's liabilities. Under section 1367(b)(2)(A) of the Code and § 1.1367–2(b), if an S corporation shareholder's pro rata share of the S corporation's losses, deductions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions exceed the shareholder's stock basis, then these items may reduce the shareholder's basis in indebtedness owed to them by the S corporation (but not below zero). Under section 1367(b)(2)(B) and § 1.1367–2(c), if the basis in indebtedness has been so reduced, then any future net increase must be applied to restore such reduction in indebtedness basis before any of it may be used to increase the shareholder's basis in its stock of the S corporation.

conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution would not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution. This adjustment in proposed § 1.170A–14(l)(3)(ii) would be made because it would not be appropriate or consistent with section 170(h)(7)(B)(ii)(I) for modified basis, and thus relevant basis, to reflect a reduction for the very contribution that is being analyzed under the Disallowance Rule as such an approach might result in deductions being inappropriately disallowed by the Disallowance Rule.

Second, proposed § 1.170A–14(l)(3)(iii) would provide that the amount determined under proposed § 1.170A–14(l)(3)(ii) must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount would be such ultimate member's modified basis. Inappropriate double counting of relevant basis might occur unless the proposed regulations provide this rule. For example, assume individual A owns a portion of the outstanding shares of an S corporation. In early July, A sells all its shares to B. In December, the S corporation makes a qualified conservation contribution. Absent a terminating election under § 1.1377–1(b), the S corporation would allocate some of the qualified conservation contribution to each of A and B. Unless A's and B's modified bases (and thus, their relevant bases) are adjusted to reflect that each was a shareholder for approximately half of the year, the S corporation's computation of the sum of each of its ultimate member's relevant basis would be inappropriately overstated. The Treasury Department and the IRS request comments on whether there are certain situations in which the divisor should be less than the full number of days in the S corporation's taxable year. In particular, the Treasury Department and the IRS request comments on whether, and how, elections under §§ 1.1368–1(g)(2) and 1.1377–1(b) should result in the divisor being less than the full number of days in the S corporation's taxable year. It would be particularly helpful for commenters to address situations in which elections under §§ 1.1368–1(g)(2) and 1.1377–1(b) affect some, but not all, of the shareholders.

Section 170(h)(7)(B)(ii)(III) provides authority for the Secretary to provide for other adjustments in the computation of modified basis. The Treasury Department and the IRS request comments on whether any additional adjustments to arrive at modified basis would be appropriate.

The proposed regulations also contain examples illustrating the determination of modified basis. Comments are requested on whether it would be helpful to add examples with other factual scenarios.

2. Allocation of Modified Basis and Determination of Relevant Basis

Proposed § 1.170A–14(m) would provide rules for determining the portion of an ultimate member's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is the final step in the determination of relevant basis. Section 170(h)(7)(B)(i) provides that the allocation is made under rules similar to the rules of section 755. Section 755 provides rules for allocating special basis adjustments to partnership property resulting from partnership distributions or transfers of partnership interests, such as adjustments under section 734(b) of the Code and adjustments under section 743(b) of the Code.

Section 755(a) generally provides that any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) is allocated (1) in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties, or (2) in any other manner permitted by regulations. The regulations under section 755 provide rules for performing these allocations. Those rules can be complex and involve several different methods for allocating basis adjustments among the partnership's properties, including:

(1) Allocating in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties. *See* § 1.755–1(b)(2)(i) and (b)(3).

(2) Allocating in proportion to the transferee's share of the amount that would be realized by the partnership upon the hypothetical sale of each property. *See* § 1.755–1(b)(5)(iii)(A).

(3) Allocating in proportion to the fair market values of the partnership's properties. *See* § 1.755–1(c)(2)(i).

(4) Allocating in proportion to the partnership's adjusted bases in its properties. *See* § 1.755–1(c)(2)(ii).

(5) Allocating in proportion to the partner's share of the adjusted bases in the partnership's properties. *See* § 1.755–1(b)(5)(iii)(B).

In considering which of these allocation rules would be most appropriate to determine relevant basis, the Treasury Department and the IRS considered the special basis adjustment and loss limitation rules for charitable contributions. Those rules look to a partner's or shareholder's share of the partnership's or S corporation's basis in the contributed property.

Generally, section 705(a)(2) provides that the adjusted basis of a partner's interest in a partnership is decreased (but not below zero) by distributions by the partnership and by the sum of the partner's distributive share for the taxable year and prior taxable years of (1) losses of the partnership, and (2) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account. Generally, when a partnership makes a charitable contribution, the partners are not required to reduce their adjusted bases in their partnership interests by the fair market value of the contribution. Instead, Revenue Ruling 96–11, 1996–1 C.B. 140, provides that after a partnership makes a charitable contribution of property, the basis of each partner's interest in the partnership is decreased (but not below zero) by the partner's share of the partnership's basis in the property contributed. Revenue Ruling 96–11 explains that reducing the partners' bases in their partnership interests by their respective shares of the permanent decrease in the partnership's basis in its properties preserves the intended benefit of providing a deduction (in circumstances not under section 170(e)) for the fair market value of appreciated property without recognition of the appreciation. In contrast, reducing the partners' bases in their partnership interests by the fair market value of the contributed property would subsequently cause the partners to recognize gain (or a reduced loss), for example, upon a disposition of their partnership interests, attributable to the unrecognized appreciation in the contributed property at the time of the contribution.

The partnership loss limitation rules in section 704(d) of the Code have a similar rule for charitable contributions. Generally, section 704(d)(1) provides that a partner's distributive share of partnership loss is allowed only to the

extent such partner's adjusted basis in its partnership interest at the end of the partnership year in which such loss occurred. Section 704(d)(3)(A) provides, in part, that in determining the amount of any loss under section 704(d)(1), the partner's distributive share of charitable contributions as defined in section 170(c) must be taken into account. However, section 704(d)(3)(B) provides that, in the case of a charitable contribution of property whose fair market value exceeds its adjusted basis, section 704(d)(3)(A) does not apply to the extent of the partner's distributive share of such excess.

The rules for S corporations also look to the shareholder's share of the S corporation's basis in the contributed property. Section 1367(a)(2)(B) of the Code provides that the basis of each shareholder's stock is reduced by the items of loss and deduction described in section 1366(a)(1)(A). However, the second sentence of section 1367(a)(2) provides that the decrease in basis under section 1367(a)(2)(B) by reason of a charitable contribution (as defined in section 170(c)) of property is the amount equal to the shareholder's pro rata share of the adjusted basis of such property.[2]

Generally, section 1366(d)(1) provides that the aggregate amount of losses and deductions taken into account by a shareholder under section 1366(a) for any taxable year cannot exceed the sum of (1) the adjusted basis of the shareholder's stock in the S corporation, and (2) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder. However, section 1366(d)(4) provides that, in the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, section 1366(d)(1) does not apply to the extent of the excess (if any) of (1) the shareholder's pro rata share of such contribution, over (2) the shareholder's pro rata share of the adjusted basis of such property. *See also* Rev. Rul. 2008–16, 2008–1 C.B. 585.

Therefore, generally partnerships and S corporations making charitable contributions are already required to track each partner's and shareholder's share of the entity's basis in the contributed property. And as noted previously, in certain circumstances the rules under section 755 also look to the partner's share of the partnership's basis in its properties. Accordingly, as described in this section of the preamble, these proposed regulations would require the allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made to be based on the ultimate member's share of the entity's bases in its properties. This provides an administrable standard consistent with the purposes of section 170(h)(7).

The Treasury Department and the IRS considered alternatives to this rule. In particular, the Treasury Department and the IRS considered simply cross-referencing the rules under section 755. Under that alternative approach, the amount of each partner's modified basis would be treated for purposes of the computation of relevant basis as a special basis adjustment under section 734(b) or section 743(b); relevant basis would be the portion of modified basis that would be allocated under the rules of section 755 to the portion of the real property with respect to which the contribution was made. Such an approach would be less consistent with the purposes of the Disallowance Rule. As noted previously, basis allocations under section 755 are sometimes made in a way to reduce or eliminate built-in gain or loss in partnership property. The relevant basis rule of section 170(h)(7) is designed to determine the portion of a partner's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is a broader and, generally, different concept than determining the partner's share of built-in gain or loss in that property. The approach in the proposed regulations is similar to the rules of section 755 and consistent with the rule of section 170(h)(7)(B)(i). The Treasury Department and the IRS request comments on whether another acceptable allocation approach would be easier or more administrable.

Proposed § 1.170A–14(m)(1) would provide that the allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made must be made in accordance with proposed § 1.170A–14(m). Rules for allocating an ultimate member's modified basis in a contributing partnership would be provided in proposed § 1.170A–14(m)(2). Rules for allocating an ultimate member's modified basis in a contributing S corporation would be provided in proposed § 1.170A–14(m)(3). Rules for allocating an ultimate member's modified basis in an upper-tier partnership would be provided in proposed § 1.170A–14(m)(4). Rules for allocating an ultimate member's modified basis in an upper-tier S corporation would be provided in proposed § 1.170A–14(m)(5). Records would be required to be kept in accordance with proposed § 1.170A–14(m)(6).

a. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in a Contributing Partnership

Proposed § 1.170A–14(m)(2)(i) through (iii) would provide a narrative rule applicable in the case of an ultimate member holding a direct interest in a contributing partnership and would provide that a contributing partnership must determine each such ultimate member's relevant basis as provided therein. Relevant basis would equal each ultimate member's modified basis as determined under proposed § 1.170A–14(l)(2) multiplied by a fraction (1) the numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed § 1.170A–14(m)(2)(ii); and (2) the denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under proposed § 1.170A–14(m)(2)(iii).

The Treasury Department and the IRS note that this numerator determines the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, which is what is required by the statute, but may be different than the ultimate member's share of the contributing partnership's adjusted basis in the contributed property. As noted previously, section 704(d) and Revenue Ruling 96–11 require a partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's basis in the contributed property. For example, assume a partnership owns 100 acres of real property, and grants a conservation easement that is a qualified conservation contribution on 60 of those acres. Assume the partnership's adjusted basis in the 100 acres is $100,000, its adjusted basis in the 60 acres is $60,000, and its adjusted basis in the conservation easement itself is $45,000. Section 705(a)(2)(B) and Revenue Ruling 96–11 would require each partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's $45,000 basis in the easement. On the other hand, the

[2] Whether a qualified conservation contribution is a disallowed qualified conservation contribution has no effect on the application of sections 705 and 1367 to the contribution. These basis reductions remain required regardless of whether a qualified conservation contribution is a disallowed qualified conservation contribution.

computation of each ultimate member's relevant basis would look to the ultimate member's share of the partnership's $60,000 basis in the 60 acres (the portion of the real property with respect to which the qualified conservation contribution was made). As described in the following paragraphs, these proposed regulations would provide computational rules for determining an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made. The Treasury Department and the IRS request comments on whether these computations generally align with the methods used by partnerships to determine each partner's share of the partnership's basis in the contributed property for purposes of sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96–11. In terms of the example in this paragraph, the Treasury Department and the IRS request comments on whether the rules in the proposed regulations for determining each ultimate member's share of the partnership's $60,000 basis in the 60 acres align with the way in which the partnership would determine each partner's share of the partnership's $45,000 basis in the conservation easement for purposes of applying sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96–11.

Proposed § 1.170A–14(m)(2)(ii) would provide that, for purposes of proposed § 1.170A–14(m), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made multiplied by a fraction (1) the numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and (2) the denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

The Treasury Department and the IRS considered several alternatives to this rule, including determining the ultimate member's share of the contributing partnership's adjusted basis in the property based on the ultimate member's share of gain, loss, and cash distributions attributable to the property. However, there may be situations in which the allocation of a qualified conservation contribution does not match the partners' shares of gain, loss, or cash distributions with respect to the property. Accordingly, the Treasury Department and the IRS determined that such an approach would be less accurate. In addition, the proposed rule would be less burdensome for taxpayers and more easily administrable for the IRS because it would be based on the partnership's actual allocation of the contribution, rather than on a hypothetical sale of the property.

Proposed § 1.170A–14(m)(2)(iii) would provide that, for purposes of proposed § 1.170A–14(m), an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of: (1) the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed § 1.170A–14(m)(2)(ii), plus (2) the ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made. Proposed § 1.170A–14(m)(2)(iii) would provide that, to determine the ultimate member's share of the adjusted basis in all the contributing partnership's properties, the contributing partnership must apportion among its partners in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

The Treasury Department and the IRS considered alternatives to this rule, including determining the ultimate member's portion of the partnership's adjusted basis in all its properties in accordance with § 1.743–1(d), which provides for the determination of a transferee partner's share of the partnership's adjusted basis of its property for purposes of computing special basis adjustments under section 743(b). The Treasury Department and the IRS also considered determining the ultimate member's portion of the partnership's adjusted basis in all its properties in proportion to the ultimate member's share of the built-in gain in each of the partnership's properties. The Treasury Department and the IRS determined that these approaches would be more complex and could reach results that are less accurate for purposes of the Disallowance Rule. In particular, as previously mentioned, the partnership's allocation of the qualified conservation contribution might differ from the way that the partnership would allocate gain and loss and make cash distributions with respect to the contributed property. Moreover, these approaches would require the partnership to obtain a valuation of each of its properties at the time of the qualified conservation contribution. The Treasury Department and the IRS also considered an approach under which each ultimate member's portion of the partnership's adjusted basis in all its properties would be determined in proportion to the ultimate member's share of the qualified conservation contribution. Although such an approach would be simpler than using the partners' interests in the partnership, it would be less accurate. The Treasury Department and the IRS also considered an approach based on section 704(b) capital accounts. However, not all partnerships use the section 704(b) capital account safe harbor, and such an approach would also require a revaluation of partnership properties as of the time of the contribution. The Treasury Department and the IRS also considered a rule based on how the partnership would allocate depreciation from the properties, similar to the rule in § 1.199A–2(a)(3)(ii). However, such a rule would not address property that is not depreciable. The Treasury Department and the IRS request comments on these proposed rules and alternatives.

Proposed § 1.170A–14(m)(2)(iv) would provide a formulaic version of the narrative rules in proposed § 1.170A–14(m)(2)(i) through (iii).

b. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in a Contributing S Corporation

Proposed § 1.170A–14(m)(3)(i) would provide a narrative rule for the determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation. It would provide that a contributing S corporation must determine each such ultimate member's relevant basis as provided therein. Relevant basis would equal each ultimate member's modified basis as determined under proposed § 1.170A–14(l)(3) multiplied by a fraction (1) the numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and (2) the denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the

contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made). The Treasury Department and the IRS request comments on whether this rule is sufficiently clear, and whether additional rules are needed regarding the time at which the pro rata portions of bases are determined. For example, the regulations could provide that these determinations are made as of the time of the qualified conservation contribution; however, in the event that an ultimate member is not a shareholder at that time, it would be unclear when the determination is to be made.

Proposed § 1.170A–14(m)(3)(ii) would provide a formulaic version of the narrative rules in proposed § 1.170A–14(m)(3)(i).

c. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in an Upper-Tier Partnership

Proposed § 1.170A–14(m)(4) would provide rules for determining the relevant basis of an ultimate member holding a direct interest in an upper-tier partnership. Proposed § 1.170A–14(m)(4)(i) would provide that each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed § 1.170A–14(m)(4) would describe a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. Proposed § 1.170A–14(m)(4)(i) would provide that, in a situation involving more tiers, each partnership must apply the rules and principles of proposed § 1.170A–14(m)(4) iteratively to determine relevant basis. In a tiered structure, the determination of relevant basis should reflect the basis of the ultimate members that intend to claim a portion of the deduction and thus, cannot be done without computations at the level of each entity. The Treasury Department and the IRS request comments on whether, and how, these rules can be simplified, and whether any additional rules are necessary to prevent the avoidance of the Disallowance Rule in tiered structures.

Proposed § 1.170A–14(m)(4)(ii)(A) would provide a narrative rule for the upper-tier partnership. It would provide that the upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that would be the contributing partnership). This proposed regulation would require this determination to be made in accordance with the principles of proposed § 1.170A–14(m)(2), and the formula provided in proposed § 1.170A–14(m)(4)(ii)(B). In other words, the formula provided in proposed § 1.170A–14(m)(4)(ii)(B) would be similar to the formula provided in proposed § 1.170A–14(m)(2)(iv), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed § 1.170A–14(m)(4)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in proposed § 1.170A–14(m)(4)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed § 1.170A–14(m)(4)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A–14(m)(4)(ii)(B) would provide that the rule of proposed § 1.170A–14(m)(4)(ii) is also expressed in the following formula: [3]

$$G = M \times (U \div (J + U))$$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

M = Modified basis as determined under proposed § 1.170A–14(l).

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

B = Ultimate member's distributive share of the qualified conservation contribution.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item ''G'' to determine relevant basis. Proposed § 1.170A–14(m)(4)(iii)(A) would provide a narrative rule for the contributing partnership to complete this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed § 1.170A–14(m)(4)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A–14(m)(2), and the formula provided in proposed § 1.170A–14(m)(4)(iii)(B).

Proposed § 1.170A–14(m)(4)(iii)(B) would provide that the rule of proposed § 1.170A–14(m)(4)(iii) is also expressed in the following formula:

$$R = G \times (V \div (L + V))$$

Where:

R = Relevant basis.

G = Amount determined with respect to item G as described previously under proposed § 1.170A–14(m)(4)(ii)(B).

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

[3] Under the order of operations for mathematical computations, operations contained in parenthesis (such as the addition of J and U) are performed before the rest of the equation.

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (K ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

d. *Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in an Upper-Tier S Corporation*

Proposed § 1.170A–14(m)(5) would provide rules for determining relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation. Proposed § 1.170A–14(m)(5)(i) would provide that each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed § 1.170A–14(m)(5) would describe a situation in which there are two tiers—a contributing partnership and an upper-tier S corporation. Proposed § 1.170A–14(m)(5)(i) would provide that, in a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of proposed § 1.170A–14(m) iteratively to determine relevant basis.

Proposed § 1.170A–14(m)(5)(ii)(A) would provide a narrative rule for the upper-tier S corporation. It would provide that the upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that would be the contributing partnership). The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A–14(m)(3), and the formula provided in proposed § 1.170A–14(m)(5)(ii)(B). In other words, the formula provided in proposed § 1.170A–14(m)(5)(ii)(B) would be similar to the formula provided in proposed § 1.170A–14(m)(3)(ii), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed § 1.170A–14(m)(5)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in proposed § 1.170A–14(m)(5)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed § 1.170A–14(m)(5)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A–14(m)(5)(ii)(B) would provide that the rule of proposed § 1.170A–14(m)(5)(ii) is also expressed in the following formula:

$$N = M \times (P \div Q)$$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.
M = Modified basis as determined under proposed § 1.170A–14(l).
P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.
Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's interest in the contributing partnership).

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item ''N'' to determine relevant basis. Proposed § 1.170A–14(m)(5)(iii)(A) would provide a narrative rule for the contributing partnership to compute this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed § 1.170A–14(m)(5)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A–14(m)(2), and the formula provided in proposed § 1.170A–14(m)(5)(iii)(B).

Proposed § 1.170A–14(m)(5)(iii)(B) would provide that the rule of proposed § 1.170A–14(m)(5)(iii) is also expressed in the following formula:

$$R = N \times (W \div (S + W))$$

Where:

R = Relevant basis.
N = Amount determined with respect to item N as described previously under proposed § 1.170A–14(m)(5)(ii)(B).
S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.
W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (Y ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
Y = Upper-tier S corporation's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

The proposed regulations would provide examples illustrating these rules. The Treasury Department and the IRS request comments on the determination of relevant basis.

3. Recordkeeping Requirements

Proposed § 1.170A–14(m)(6) would provide that contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must each maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. It would also provide that these statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in proposed § 1.170A–14(n)(2) (contributions outside a three-year holding period) or (n)(3) (family pass-

through entities). However, these statements must be maintained with respect to contributions that meet the exception in proposed § 1.170A–14(n)(4) for certified historic structures because section 170(f)(19) imposes special reporting requirements for such contributions if they exceed 2.5 times the sum of relevant basis.

F. Exceptions to the Disallowance Rule

Consistent with section 170(h)(7)(C), (D), and (E), the rules in proposed § 1.170A–14(n) would provide definitions and additional guidance relating to the three exceptions to the Disallowance Rule. It would also provide that there is no presumption that such a contribution otherwise is compliant with section 170, any other section of the Code, or the regulations or any other guidance thereunder; being described in proposed § 1.170A–14(n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution; such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 and overvaluation of the contribution; and taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

1. Exception for Contributions Outside Three-Year Holding Period

Consistent with section 170(h)(7)(C), proposed § 1.170A–14(n)(2)(i) would provide that § 1.170A–14(j) does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation that is made at least three years after the latest of (1) the last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made, (2) the last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation, and (3) if the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations (A) the last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the contributing partnership or any other such upper-tier partnership, and (B) the last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest in such upper-tier partnership or upper-tier S corporation.

Neither section 605 of SECURE 2.0 Act nor section 170 defines the phrase ''acquired any interest.'' An acquisition of an interest in a partnership can occur in several ways, including by inheritance, purchase from an existing partner, in a section 721 exchange with the partnership, in exchange for the provision of services, or as a distribution from an upper-tier partnership. An existing partner can also acquire additional interests in the partnership. In addition, one partner's complete or partial disposition of an interest in the partnership can be economically similar to the acquisition of an interest in the partnership by the remaining partners. For example, if a partnership makes a distribution that reduces one partner's interest in the profits or losses of the partnership, the remaining partners' interests, in the aggregate, may increase in the same manner as if they had acquired additional interests in the partnership.

The rules under section 706(c) and (d) address partnership allocations in situations involving variations in partners' interests attributable to acquisitions and dispositions. Section 1.706–4(a)(1) provides rules for determining the partners' distributive shares of partnership items when a partner's interest in a partnership varies during the taxable year as a result of the disposition of a partial or entire interest in a partnership as described in § 1.706–1(c)(2) and (3),[4] or with respect to a partner whose interest in a partnership is reduced as described in § 1.706–1(c)(3), including by the entry of a new partner, collectively referred to as a ''variation.'' Generally, a variation includes any acquisition, partial disposition, or complete disposition of an interest in the partnership. However, § 1.706–4(b)(1) provides that the rules in § 1.706–4(a)(3) do not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners, provided that any variation in a partner's interest is not attributable to a contribution of money or property by a partner to the partnership or a distribution of money or property by the partnership to a partner, and the allocations resulting from the modification satisfy the requirements in section 704(b) and the regulations thereunder. Generally, partnerships are familiar with the rules under § 1.706–4 because they must apply such rules in computing allocations whenever there is an acquisition or disposition of a partner's interest during the taxable year.

The definition of ''variation'' in § 1.706–4 would provide an administrable standard consistent with the purposes of section 170(h)(7)(C). Accordingly, proposed § 1.170A–14(n)(2)(ii) would provide that, for purposes of § 1.170A–14(n)(2), an acquisition of any interest in a partnership is any ''variation'' within the meaning of that term in § 1.706–4(a)(1); however, a variation would not include a change in allocations that satisfies the requirements of § 1.706–4(b)(1). The Treasury Department and the IRS considered alternatives to this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the variation rules of § 1.706–4 would be more appropriate in this context.

Proposed § 1.170A–14(n)(2)(iii) would define an acquisition of any interest in an S corporation as any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition would not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder (for example, a stock split). The Treasury Department and the IRS considered alternatives to this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the proposed rule would be more appropriate in this context.

Proposed § 1.170A–14(n)(2)(iv) would provide that, if the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A–14(n)(2), then proposed § 1.170A–14(n)(2) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation

[4] Section 1.706–1(c)(2) provides in part that a partnership taxable year closes with respect to a partner who sells or exchanges the partner's entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated, and with respect to a partner who dies. Section 1.706–1(c)(3) provides that if a partner sells or exchanges a part of the partner's interest in a partnership, or if the interest of a partner is reduced, the partnership taxable year continues to its normal end.

contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A–14(n)(2) if the person had been the one to make the qualified conservation contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the three-year-holding-period exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(C), which explicitly applies the holding period requirements to the contributing partnership.

The proposed regulations contain two examples illustrating these rules. The Treasury Department and the IRS request comments on whether any additional rules or examples should be provided for the three-year holding period exception.

2. Exception for Family Pass-Through Entities

As mentioned earlier, section 170(h)(7)(D)(i) provides the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. The Treasury Department and the IRS are aware that the meaning of the term ''substantially all'' in section 170(h)(7)(D)(i) may not be clear and that such ambiguity could impair taxpayers' ability to determine whether they qualify for the family pass-through entity exception. For purposes of applying different provisions of the Code that also use that term, various Income Tax Regulations define the term ''substantially all'' as comprising different percentages, including: 70 percent (§ 1.1400Z2(d)–2(d)(4)); 80 percent (§§ 1.41–2(d)(2), 1.41–4(a)(6)); 85 percent (§§ 1.45D–1(c)(5), 1.72(e)–1T, Q&A 3; 1.528–4(b) and (c)); 90 percent (§§ 1.103–8(a)(1)(i), 1.103–16(c), 1.731–2(c)(3)(i); 1.1400Z2(d)–2(d)(3)); and 95 percent (§§ 1.448–1T(e)(4)(i) and (e)(5)(i), 1.460–6(d)(4)(i)(D)(*1*)). It is appropriate to select a percentage at the higher end of this range to carry out the purpose of section 170(h)(7) of preventing abusive syndications of qualified conservation contributions. Accordingly, the Treasury Department and the IRS propose to define ''substantially all'' for purposes of section 170(h)(7)(D)(i) and § 1.170A–14(n)(3)(i) as 90 percent of the interests in the contributing partnership or contributing S corporation that meets the requirements of proposed § 1.170A–14(n)(3).

Thus, proposed § 1.170A–14(n)(3)(i) would provide that § 1.170A–14(j) does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual, and the contributing partnership or contributing S corporation meets the requirements of proposed § 1.170A–14(n)(3).

The Treasury Department and the IRS are also aware that it may be unclear what ''interests'' in the contributing partnership or contributing S corporation are to be taken into account for purposes of the family pass-through entity exception. Generally, the Code characterizes interests in a partnership as comprising the ''capital interests'' in the partnership and the ''profits interests'' in the partnership. *See,* for example, section 707(b) of the Code. The Treasury Department and the IRS propose limiting the family pass-through entity exception to situations in which an individual and the family members of such individual own at least 90 percent of both the capital and profits interests in the contributing partnership. Doing so would help to ensure that the family pass-through entity exception does not apply in situations in which persons outside an individual's family own a substantial economic interest in the partnership. Accordingly, proposed § 1.170A–14(n)(3)(ii)(A) would provide that, in the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

A similar rule is proposed for S corporations. Section 1361(b)(1)(D) requires that an S corporation have only one class of stock. However, section 1361(c)(4) provides that differences in voting rights alone do not create a second class of stock. The Treasury Department and the IRS propose limiting the family pass-through entity exception in the case of S corporations to situations in which the individual and the family of such individual own stock in the contributing S corporation possessing at least 90 percent of the total voting power and at least 90 percent of the total value of the outstanding stock of the contributing S corporation. Doing so would help to ensure that the family pass-through exception does not apply in situations in which persons outside an individual's family own a substantial economic interest in the S corporation. Accordingly, proposed § 1.170A–14(n)(3)(ii)(B) would provide that, in the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

The Treasury Department and the IRS request comments on whether these definitions of ''substantially all of the interests'' in the contributing partnership or contributing S corporation are appropriate and sufficient to ensure the intended application of the family pass-through entity exception.

Consistent with section 170(h)(7)(D)(ii), proposed § 1.170A–14(n)(3)(iii) would provide that, for purposes of § 1.170A–14(n)(3), the term ''members of the family'' means, with respect to any individual (1) the spouse of such individual, and (2) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G). Under these proposed regulations, members of the family would be limited to individuals. The Treasury Department and the IRS request comments on whether certain estates or trusts should be treated as members of the family for purposes of this rule. The Treasury Department and the IRS note that, under existing § 1.1361–1(e)(3)(ii), certain estates and trusts of deceased members of the family are treated as members of the family for purposes of the limitation on the number of shareholders in an S corporation.

As described earlier in this preamble, the Disallowance Rule and its exceptions in section 170(h)(7) are generally mechanical. However, Congress recognized that additional guidance may be needed to prevent situations in which those mechanical rules are used to avoid the purposes of the Disallowance Rule. As mentioned previously, section 170(h)(7)(G)(ii) provides the Secretary with authority to issue regulations or other guidance to

prevent the avoidance of the purposes of section 170(h)(7). Accordingly, these proposed regulations would provide two anti-abuse rules designed to ensure that the family pass-through entity exception in proposed § 1.170A–14(n)(3) is not used inappropriately to circumvent the Disallowance Rule.

First, the Treasury Department and the IRS propose to limit the family pass-through entity exception to situations in which an individual and members of that individual's family have held the requisite ownership interest in the property for at least one year prior to the contribution. The need for such a rule is the concern that, in the absence of a requirement that the members of the family hold the contributed property for a certain period of time before the contribution, promoters could structure transactions to inappropriately take advantage of tacked holding periods under section 1223 of the Code together with the family pass-through entity exception. Due to the operation of section 170(e), most contributions that exceed 2.5 times the sum of relevant basis would be expected to be of long-term capital gain property because, in those situations, the amount of the contribution would not be limited to the donor's basis. Transactions in which a family is relying on a tacked-holding period under section 1223 from another owner outside the family to claim a contribution in excess of 2.5 times the sum of relevant basis raise serious concerns that the family pass-through entity exception is being used inappropriately to circumvent the Disallowance Rule. Accordingly, proposed § 1.170A–14(n)(3)(iv)(A) would provide that the exception in proposed § 1.170A–14(n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. The proposed rules would clarify that the members of the family during that year need not be the same members of the family that own an interest at the time of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of the family with respect to that individual. The proposed regulations contain an example illustrating the application of this rule.

Second, proposed § 1.170A–14(n)(3)(iv)(B) would provide that the exception in proposed § 1.170A–14(n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the individual's family who own at least 90 percent of all the interests in the contributing partnership or contributing S corporation. The Treasury Department and the IRS are concerned that, without such a rule, contributing partnerships or contributing S corporations might be structured to meet the family pass-through exception, but the qualified conservation contribution would be allocated disproportionately to persons that are not members of the family.

Proposed § 1.170A–14(n)(3)(v) would provide that, in the case of tiered pass-through entities, the family pass-through exception is available only if the contributing partnership or contributing S corporation satisfies the requirements of § 1.170A–14(n)(3). If the contributing partnership or contributing S corporation satisfies the requirements of proposed § 1.170A–14(n)(3), then any upper-tier partnership or upper-tier S corporation need not apply § 1.170A–14(j) through (n) to its allocated portion of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A–14(n)(3), then the exception in § 1.170A–14(n)(3) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A–14(n)(3) if the person had been the one to make the contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the family pass-through entity exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(D), which explicitly applies the substantially-all requirement to the contributing partnership or contributing S corporation.

3. Exception for Contributions To Preserve Certified Historic Structures

Consistent with section 170(h)(7)(E), proposed § 1.170A–14(n)(4) would provide that proposed § 1.170A–14(j) does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). Proposed § 1.170A–14(n)(4) would also contain a cross-reference to the special reporting requirements in proposed § 1.170A–16(f)(6) for a contribution that meets the certified historic structure exception.

IV. Reporting Requirements

Existing § 1.170A–16 imposes substantiation and reporting requirements for noncash charitable contributions. Subject to certain exceptions, § 1.170A–16 requires the donor to file Form 8283, *Noncash Charitable Contributions,* in the case of a noncash charitable contribution exceeding $500. Specifically, existing § 1.170A–16(c) generally requires the donor to complete Form 8283 (Section A) in the case of a noncash charitable contribution of more than $500 but not more than $5,000. Existing § 1.170A–16(d) generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable) in the case of a noncash charitable contribution of more than $5,000. Existing § 1.170A–16(e) applies to noncash charitable contributions of more than $500,000 and generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable). Consistent with section 170(f)(11)(D), § 1.170A–16(e) requires a donor of a noncash contribution of more than $500,000 to attach an appraisal to the return on which the deduction is claimed. Existing § 1.170A–16(f) provides additional substantiation rules, including rules for donors that are partnerships or S corporations.

A. Requirement That Numbers Be Entered in Sections A and B of Form 8283

Existing § 1.170A–16(c)(3) and (d)(3) define a completed Form 8283 (Section A) and Form 8283 (Section B), respectively. To further clarify reporting requirements for donated property, proposed § 1.170A–16(c)(3)(v) and (d)(3)(ix) would add a requirement that, if a box in Section A or Section B of the Form 8283 (respectively) requests insertion of a number, the taxpayer must include the number in the box or attach a statement explaining why the taxpayer cannot include the number in the box. Taxpayers that do not include numbers where required or engage in a practice to obfuscate or otherwise defeat the requirement to include a number in the box, could be subject to heightened scrutiny and a denial of the deduction for failure to provide the requested information on the Form 8283.

The Treasury Department and the IRS believe that this rule regarding specific reporting of numerical amounts is reasonable and necessary because the IRS has observed a pronounced increase in taxpayers filing a Form 8283 that does not contain any numbers and instead refers the IRS to an attachment. Often, the attachment includes nonresponsive information, such as ''available upon request,'' is entirely blank, or otherwise does not provide the information required by Form 8283. Other times, the attachment includes multiple numbers for different boxes, leaving the IRS to surmise which of the included numbers is appropriate for a particular box. These actions are to the detriment of fair and effective tax administration. Accordingly, the proposed regulations state that Sections A and B of Form 8283, including any attachments thereto, may not include nonresponsive information, such as ''available upon request,'' ''provided upon request,'' or any other nonresponsive information other than the information requested. Including any nonresponsive language may result in a presumption that Form 8283 is incomplete.

While many taxpayers understandably want to attach a statement to the Form 8283 to verify their calculations and provide appropriate supplemental information, having the numerical information in the appropriate box on Sections A and B of Form 8283 is critical to the IRS's ability to ensure the integrity of each filing, as IRS systems are programmed to match a partner's or shareholder's information to the appropriate contributing partnership's or contributing S corporation's information. Moreover, information requested on Sections A and B of Form 8283 is information that the partnership or S corporation should already have and is already required to provide to the partner or shareholder, as appropriate. *See* § 1.170A–16(f)(4).

B. Clarification of Reporting of Certain Qualified Conservation Contributions Made by a Partnership or S Corporation

Existing § 1.170A–16(d)(3) defines a completed Form 8283 (Section B) required to substantiate charitable contributions of more than $5,000. To ensure that taxpayers claiming qualified conservation contributions properly comply with section 170(f)(19) and (h)(7), which require a partnership or S corporation to calculate the sum of the relevant basis of the partnership's or S corporation's partners or shareholders, the IRS must have relevant basis reporting from both the contributing partnership or contributing S corporation and each partner or shareholder receiving an allocation of the contribution (which will be ultimate members, upper-tier partnerships, or upper-tier S corporations). Accordingly, these proposed regulations would insert a new paragraph, proposed § 1.170A–16(d)(3)(viii).[5]

The new paragraph would provide that, for certain qualified conservation contributions made by a partnership or S corporation, the sum of each ultimate member's relevant bases, computed in accordance with § 1.170A–14(j) through (m), must be reported on the Form 8283 (Section B) in order for the Form 8283 (Section B) to be considered complete.

This new requirement applies to contributions described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations). While contributions by partnerships or S corporations to preserve historic structures are excepted from the Disallowance Rule of section 170(h)(7), they are potentially subject to section 170(f)(19), which applies when the amount of the contribution exceeds 2.5 times of the relevant bases. The Treasury Department and the IRS request comments on whether any adjustments to relevant basis are warranted in the case of a contribution to preserve a historic structure.

This new requirement also would apply for any other qualified conservation contribution by a partnership or S corporation, provided that the contribution is not described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations). If the contribution is disallowed by section 170(h)(7) and proposed § 1.170A–14(j), then the Treasury Department and the IRS expect that the contribution will not be reported to the IRS on Form 8283 because no deduction can be taken.

[5] The proposed regulations would redesignate existing § 1.170A–16(d)(3)(viii) to § 1.170A–16(d)(3)(x).

C. Clarification of Reporting of Noncash Charitable Contributions Over $500 Made by a Partnership or S Corporation

Existing § 1.170A–16(d)(6) refers to existing § 1.170A–16(f) for additional substantiation rules. Existing § 1.170A–16(f)(4) provides special substantiation rules for partner and S corporation shareholders.

Existing § 1.170A–16(f)(4)(i) provides that, if the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in the Form 8283. Similarly, existing § 1.170A–16(f)(4)(i) provides that a recipient partner or shareholder that is a partnership or S corporation must provide a copy of the completed Form 8283 to each of its partners or shareholders who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283.

Existing § 1.170A–16(f)(4)(ii) provides that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which § 1.170A–16(c), (d), or (e) applies[6] must attach a copy of the partnership's or S corporation's completed Form 8283 to the return on which the deduction is claimed.

In pass-through and tiered entity structures, the IRS regularly observes partners and shareholders providing incomplete information to substantiate their charitable contribution deductions. For example, an ultimate member might complete a Form 8283 that contains the necessary information from the Form K–1 received from the contributing partnership, contributing S corporation, or an upper-tier partnership or upper-tier S corporation. However, often, the ultimate member fails to provide a copy of the appropriate partnership's or S corporation's Form 8283 and the Form K–1. In accordance with the authority granted by section 170(h)(7)(G) to ''prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance . . . to require reporting, including reporting related to tiered partnerships and the modified basis of partners,'' these proposed regulations would revise paragraph § 1.170A–16(f)(4).

[6] In other words, a charitable contribution of more than $500 but not more than $5,000, § 1.170A–16(c), a charitable contribution of more than $5,000, § 1.170A–16(d), or noncash charitable contributions of more than $500,000, § 1.170A–16(e).

Proposed § 1.170A–16(f)(4)(i) would retain the requirement that a donor that is a partnership or S corporation provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation. That paragraph also would retain the requirement that a partnership or corporation that receives an allocation of a charitable contribution under section 170 must provide a copy of the donor's Form 8283 to its partners or shareholders who receive an allocation of the deduction, but would clarify that this reporting is required through any additional tiers.

Proposed § 1.170A–16(f)(4)(ii) would retain the rule that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution to which § 1.170A–16(c), (d), or (e) applies must attach the donor partnership's or S corporation's Form 8283 to the return on which the deduction is claimed. A clarifying requirement is added that the partner or shareholder must also attach a copy of any additional Forms 8283 that they must receive as provided in proposed § 1.170A–16(f)(4)(iii)(A).

Proposed § 1.170A–16(f)(4)(iii)(A) would provide that a partner of a partnership or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for property to which § 1.170A–16(c), (d), or (e) applies must complete their own Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In addition, a partner that is itself a partnership or S corporation must complete its own Form 8283 and provide a copy of that Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed in addition to the copy of donor's Form 8283 as well as other Forms 8283 that the partner or shareholder received. This new requirement would apply to all noncash charitable contributions over $500 made by a partnership or S corporation, not just those for conservation easements.

Proposed § 1.170A–16(f)(4)(iii)(B) would provide that, if the contribution was a qualified conservation contribution, an ultimate member's separate Form 8283 must include the ultimate member's own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases. However, the requirements that an ultimate member provide their own relevant basis and that an upper-tier partnership or upper-tier S corporation include the sum of its ultimate member's relevant bases do not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case proposed paragraph § 1.170A–16(f)(4)(iii)(B) does apply. The Form 8283 instructions will be revised accordingly.

D. Additional Reporting Required by Section 170(f)(19)

To ensure proper reporting under section 170(f)(19), the proposed regulations would add new § 1.170A–16(f)(6). Specifically, proposed § 1.170A–16(f)(6)(i) would provide that, in the case of any contribution described in section 170(h)(4)(C) and proposed § 1.170A–16(f)(6)(ii) (relating to the preservation of certified historic structures), pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless each partnership or S corporation (1) includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion and (2) provides such information about the contribution as the Secretary may require in guidance, forms, or instructions. The reference to ''any other provision of the Code under which deductions are allowable to pass-through entities'' is included under the authority of section 170(f)(19)(C) to apply these rules to S corporations and other pass-through entities in the same manner as such rules apply to partnerships and their partners, and is necessary to prevent such pass-through entities and their owners from claiming a deduction under a different provision of the Code other than section 170, such as section 642(c), unless the statutory and regulatory requirements of section 170(f)(19) are met.

Proposed § 1.170A–16(f)(6)(ii) describes (using terms defined in proposed § 1.170A–14(j)(3)) the contributions to which proposed § 1.170A–16(f)(6) would apply, namely any qualified conservation contribution (as defined in section 170(h)(1) and proposed § 1.170A–14) for which: (1) the conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)); (2) that is either made by a contributing partnership or contributing S corporation, or that is an allocated portion of an upper-tier partnership or upper-tier S corporation; and (3) the amount of such contribution or such allocated portion exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in proposed § 1.170A–14(j) through (m)).

Proposed § 1.170A–16(f)(6)(iii) would provide that a partnership or S corporation satisfies the requirement to have made a statement that it made such a contribution or received such allocated portion and to provide such information about the contribution as the Secretary may require by filing Form 8283 (including information about relevant basis) in accordance with section 170, the regulations under section 170 (including those proposed in this notice of proposed rulemaking), and the instructions to Form 8283.

V. Section 706 Regulations

The general mechanism of section 170(h)(7) with respect to partnerships is to compare the amount of the partnership's contribution (or its distributive share of a contribution made by another partnership) to 2.5 times the sum of each of its partner's relevant basis. Relevant basis is based on modified basis, which is based on the partner's adjusted basis in its partnership interest immediately before the contribution. Without additional rules, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the qualified conservation contribution. Such partners would not have any adjusted basis in their partnership interests immediately before the contribution, and thus, without additional rules, their relevant basis would be zero. Therefore, rules are needed to align the computation of relevant basis (which is generally required to be computed immediately before the computation) with the allocation of the contribution among the partners.

Generally, section 706 and § 1.706–4 of the existing regulations provide rules for determining a partner's distributive share of partnership items when a partner's interest in the partnership varies during the taxable year. For example, assume a partner holding a 25 percent interest in a calendar-year partnership sells its 25 percent interest on July 1. Under section 706 and

§ 1.706–4, the partnership would not allocate the selling partner 25 percent of all items of income for the year because the selling partner had no interest in the partnership for the final half of the year. Instead, the partnership would follow the rules of § 1.706–4 to ensure that the allocations properly reflect the sale of the partner's interest. Generally, the rules of § 1.706–4 allow partnerships to use either a proration method or an interim closing of the books method (interim closing method).[7] In the example, a partnership using the proration method generally would allocate the selling partner 12.5 percent (reflecting the fact that the selling partner held a 25 percent interest in the partnership for half of the year) of every item of the partnership for the full year, regardless of whether the partnership incurred the item in the first or second half of the year. Alternatively, a partnership using the interim closing method generally would allocate the selling partner 25 percent of every item occurring in the first half of the year.

Section 1.706–4 provides an exception to these rules for certain ''extraordinary items,'' which must be allocated in accordance with the partners' interests in the item at the time of day the extraordinary item occurred. Section 1.706–4(e)(2) provides a list of these extraordinary items. In particular, § 1.706–4(e)(2)(i) and (ii) provide that an extraordinary item includes any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 of the Code (determined without the application of any other rules of law) and any item from the disposition or abandonment (other than in the ordinary course of business) of property used in a trade or business as defined in section 1231(b) of the Code (determined without the application of any holding period requirement). Section 1.706–4(e)(3) provides a ''small item exception'' under which certain items in the list in § 1.706–4(e)(2) nevertheless are not extraordinary items if they fall below certain thresholds.

Proposed § 1.706–4(e)(2)(ix) would provide that an extraordinary item includes any qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)). The proposed amendments to existing § 1.706–4(e)(3) contained in these proposed regulations would provide that the small item exception does not apply to any qualified conservation contribution. These rules are designed to ensure that modified basis can be computed immediately before the contribution, as directed in section 170(h)(7). The Treasury Department and the IRS considered alternatives to this rule. However, many, and perhaps most, qualified conservation contributions are already considered extraordinary items under existing § 1.706–4(e)(2)(i) or (ii). The proposed rule, however, provides clarity and uniformity regarding the application of the extraordinary item rule to qualified conservation contributions and facilitates the computation of a partner's modified basis immediately before the contribution as directed by the statute.

Section 706(d)(3) provides rules for an upper-tier partnership's allocation of items to its partners attributable to an interest in a lower-tier partnership. It provides that if, during any taxable year of the upper-tier partnership there is a change in any partner's interest in the upper-tier partnership, then (except to the extent provided in regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership must be determined by assigning the appropriate portion (determined by applying principles similar to the principles of section 706(d)(2)(C) and (D)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. The Treasury Department and the IRS are concerned that, even if a lower-tier partnership's qualified conservation contribution is treated as an extraordinary item with respect to the lower-tier partnership, an upper-tier partnership might nevertheless attempt to rely on section 706(d)(3) and allocate its share of the contribution to partners that were not partners on the date of contribution. To facilitate the computation of a partner's relevant basis immediately before the contribution, proposed § 1.706–3(a) would provide that, for purposes of section 706(d)(3), in the case of a qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706–4. The Treasury Department and the IRS request comments on whether these rules are necessary and sufficient to ensure the appropriate operation of the Disallowance Rule.

Proposed Applicability Dates

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022. Pursuant to section 7805(b)(2) of the Code, regulations issued under section 170(f)(19) and (h)(7) within 18 months of the December 29, 2022, date of enactment of section 605 of the SECURE 2.0 Act are permitted to apply to periods ending before the dates provided under section 7805(b)(1). Accordingly, the proposed regulations under §§ 1.170A–14(j) through (n), 1.706–3, and 1.706–4 are proposed to apply to contributions made after December 29, 2022.

To align the reporting requirements under § 1.170A–16 with the publication of the revised Form 8283 and its instructions, the proposed regulations under § 1.170A–16 are proposed to apply to contributions made in taxable years ending on or after November 20, 2023.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number.

The collection of information contained in these proposed regulations is reflected in the collection of information for Form 8283 and Schedule K–1 for Forms 1065, U.S. Return of Partnership Income, and 1120–S, U.S. Income Tax Return for an S corporation, that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44

[7] The rules of § 1.706–4 also require the use of conventions to determine the date on which variations are deemed to occur. Discussion of these conventions is beyond the scope of this preamble.

U.S.C. 3507(c)) under control numbers 1545–0074 and 1545–0123. The estimated burden for taxpayers filing Form 8283 under OMB control number 1545–0074 is nineteen minutes for recordkeeping, twenty-nine minutes for learning about the law or the form, one hour and four minutes for preparing the form, and thirty-four minutes for copying, assembling, and sending the form to the IRS.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Form 8283 and Schedule K–1 for Forms 1065 and 1120–S. The requirement to maintain records to substantiate information on Form 8283 and Schedule K–1 for Forms 1065 and 1120–S is already contained in the burden associated with the control number for the forms and remains unchanged.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This rule would affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share of a noncash charitable contribution. Although data is not readily available about the number of small entities that are potentially affected by this rule, it is possible that a substantial number of small entities may be affected.

The impact of these proposed regulations can be described in the following four categories.

First, proposed § 1.170A–14(j) through (n) would provide guidance in applying section 170(h)(7), including providing definitions, formulas for the required calculations, and examples to help ensure the effective application of section 170(h)(7), and proposed §§ 1.706–3 and 1.706–4(e)(2)(ix) would provide special rules for allocating qualified conservation contributions. Even assuming that these provisions affect a substantial number of small entities, they will not have a significant economic impact. Section 170(h)(7) is self-executing and imposes the burden of calculating relevant basis and applying the Disallowance Rule. Because these proposed regulations are focused on providing definitional and computational guidance related to section 170(h)(7), their economic impact is expected to be minimal.

Second, proposed § 1.170A–16(d)(3)(viii) would require the Form 8283 filed by contributing partnerships and contributing S corporations to include the sum of each ultimate member's relevant basis. The existing regulations under § 1.170A–16 already requires these entities to file Form 8283. Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to put a small amount of additional information, which section 170(h)(7) and (f)(19) requires them to determine, on a form they are already required to file.

Third, proposed § 1.170A–16(f)(6) would require a partnership or S corporation to file a completed Form 8283 to be considered to satisfy the requirements of section 170(f)(19)(A)(i). Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to put a small amount of additional information on a form they are already required to file.

Fourth, proposed § 1.170A–16(f)(4)(iii) would require all partners and shareholders of S corporations who receive an allocation of a noncash charitable contribution to file a separate Form 8283. Many of these partners and shareholders will be individuals, not small entities. However, even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact. The partnership or S corporation will provide the partner or shareholder with all, or substantially all, of the information to be reported on the separate Form 8283; this information will be contained either on the partnership's or S corporation's Form 8283 or the Schedule K–1 issued to the partner or shareholder. Accordingly, in most cases partners and shareholders will simply be transcribing information provided to them onto the separate Form 8283.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

VI. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and any paper comments submitted, will be made available at *https://www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

A public hearing has been scheduled for January 3, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC, unless no outlines are received by December 20, 2023. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by December 20, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. If no outline of the topics to be discussed at the hearing is received by December 20, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*https://www.regulations.gov*) under the title of Supporting & Related Material. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov*. Please put ''REG–112916–23 Agenda Request'' in the subject line of the email.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–112916–23 and the language ''TESTIFY In Person.'' For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–112916–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–112916–23 and the language ''TESTIFY Telephonically.'' For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–112916–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–112916–23 and the language ''ATTEND In Person.'' For example, the subject line may say: Request to ATTEND Hearing In Person for REG–112916–23. Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–112916–23 and the language ''ATTEND Hearing Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–112916–23. Requests to attend the public hearing must be received by 5 p.m. ET on December 29, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by December 28, 2023.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal authors of these proposed are Elizabeth Boone and Hannah Kim, Office of the Associate Chief Counsel (Income Tax & Accounting), IRS, and Benjamin Weaver, Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by:

■ 1. Adding an entry for § 1.170A–14 in numerical order;

■ 2. Revising the entry for § 1.170A–16;

■ 3. Adding an entry for § 1.706–3 in numerical order; and

■ 4. Revising the entry for § 1.706–4.

The additions and revisions read as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 1.170A–14 also issued under 26 U.S.C. 170(f)(11) and 170(h)(7).

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Section 1.170A–16 also issued under 26 U.S.C. 170(f)(11), 170(f)(19), 170(h)(7)(G), 6001, and 6011.

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Section 1.706–3 also issued under 26 U.S.C. 170(h)(7)(G).

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Section 1.706–4 also issued under 26 U.S.C. 170(h)(7)(G).

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■ **Par. 2.** Section 1.170A–14 is amended by:

■ 1. Revising paragraph (a);

■ 2. Redesignating paragraph (j) as paragraph (o) and adding new paragraph (j);

■ 3. Adding paragraphs (k) through (n); and

■ 4. Revising newly designated paragraph (o).

The additions and revisions read as follows:

§ 1.170A–14 Qualified conservation contributions.

(a) *Qualified conservation contributions.* A deduction under section 170 of the Internal Revenue Code (Code) is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (*see* § 1.170A–6 relating to charitable contributions in trust and § 1.170A–7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met and the contribution is not a disallowed qualified conservation contribution within the meaning of paragraph (j) of this section. A *qualified conservation contribution* is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under section 170(h) and this section, the conservation purpose must be protected in perpetuity.

* * * * *

(j) *Disallowance of certain deductions for contributions by partnerships and S corporations that exceed 2.5 times the sum of relevant bases*—(1) *In general.* This paragraph (j) applies the rules of section 170(h)(7), which disallow a deduction for certain qualified conservation contributions, as defined in section 170(h)(1) and this section, made by, or allocated to, partnerships or S corporations (as defined in section 1361(a)(1) of the Code) if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by this paragraph (j) and paragraphs (k) through (m) of this section (Disallowance Rule). *See* paragraph (n) of this section for certain exceptions. *See* paragraph (j)(3) of this section for definitions of terms used in this paragraph (j) and paragraphs (k) through (n) of this section.

(2) *Application*—(i) *Contributing partnerships and contributing S corporations.* Except as provided in paragraph (n) of this section, a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(ii) *Upper-tier partnerships and upper-tier S corporations.* Except as provided in paragraph (n) of this section, an allocated portion received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(3) *Definitions.* The following definitions apply for purposes of this paragraph (j) and paragraphs (k) through (n) of this section:

(i) *Allocated portion.* In the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase *allocated portion* means the amount of such distributive share.

(ii) *Amount of qualified conservation contribution.* The amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. If the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of this section must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and this section.

(iii) *Contributing partnership.* The term *contributing partnership* means a partnership that makes a qualified conservation contribution.

(iv) *Contributing S corporation.* The term *contributing S corporation* means an S corporation that makes a qualified conservation contribution.

(v) *Direct interest.* The term *direct interest* refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3), or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation (as defined in section 1361(a)(2)), non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the *direct interest* in the partnership or S corporation, as applicable, is held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries are not considered to hold any interest in the partnership or S corporation, as applicable, for purposes of this paragraph (j) and paragraphs (k) through (n) of this section.

(vi) *Directly.* An ownership interest is held *directly* if it is not held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *directly* if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

(vii) *Disallowed qualified conservation contribution.* The term *disallowed qualified conservation contribution* means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and this paragraph (j).

(viii) *Indirect interest.* The term *indirect interest* refers to an ownership interest in a contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

(ix) *Indirectly.* An ownership interest is held *indirectly* if it is held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *indirectly* if it passes through one or more upper-tier partnerships or upper-tier S corporations.

(x) *Ultimate member.* The term *ultimate member* means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members will either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Upper-tier S

corporations and upper-tier partnerships themselves are not considered ultimate members.

(xi) *Upper-tier partnership.* The term *upper-tier partnership* means a partnership that receives an allocated portion.

(xii) *Upper-tier S corporation.* The term *upper-tier S corporation* means an S corporation that receives an allocated portion.

(4) *Effect of Disallowance Rule*—(i) *If the Disallowance Rule applies to a contributing partnership or contributing S corporation.* If a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis.

(ii) *If the Disallowance Rule does not apply to a contributing partnership or contributing S corporation.* If a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and

(B) Any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

(iii) *If the Disallowance Rule applies to an upper-tier partnership or an upper-tier S corporation.* If an upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion is a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation may claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. However, this does not affect the application of this paragraph (j) and paragraphs (k) through (m) of this section to another partner of the contributing partnership; for example, if the qualified conservation contribution is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

(iv) *If the Disallowance Rule does not apply to an upper-tier partnership or upper-tier S corporation.* If an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and

(B) Any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

(5) *No inference.* There is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution as defined in paragraph (j)(3)(vii) of this section is compliant with section 170, any other section of the Code, the regulations, or any other guidance. Compliance with section 170(h)(7) and this paragraph (j) and paragraphs (k) through (n) of this section is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 and overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

(6) *Examples.* The following examples illustrate the rules of this paragraph (j). For these three examples in this paragraph (j)(6), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code, and that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1: Disallowed qualified conservation contribution*—(A) *Facts.* A, an individual, and B, a C corporation, form AB Partnership, a partnership for Federal income tax purposes. AB Partnership acquires real property. Two years later, AB Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. AB Partnership allocates the contribution equally to A and B. A's relevant basis is $30X, and B's relevant basis is $8X.

(B) *Analysis.* A and B are the ultimate members of AB Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of AB Partnership's qualified conservation contribution is $100X, which exceeds 2.5 times the sum of A's and B's relevant bases, which is $95X ($95X = 2.5 × (A's $30X relevant basis + B's $8X relevant basis)). Therefore, AB Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any

deduction with respect to this contribution, even though A's $50X distributive share of the contribution does not exceed 2.5 times A's $30X relevant basis.

(ii) *Example 2: Not a disallowed qualified conservation contribution*—(A) *Facts.* Individuals C and D form CD Partnership, a partnership for Federal income tax purposes. CD Partnership acquires real property. Two years later, CD Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. CD Partnership allocates the contribution $5X to C and $95X to D. C's relevant basis is $6X, and D's relevant basis is $34X.

(B) *Analysis.* C and D are the ultimate members of CD Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of CD Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is also $100X ($100X = 2.5 × (C's $6X relevant basis + D's $34X relevant basis)). Therefore, CD Partnership's contribution is not a disallowed qualified conservation contribution (that is, not disallowed by section 170(h)(7) and this paragraph (j)) with respect to CD Partnership, C, or D, even though D's $95X distributive share of the contribution exceeds 2.5 times D's $34X relevant basis.

(iii) *Example 3: Tiered partnerships*—(A) *Facts.* Individuals E and F form UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership and G, a C corporation, form LTP Partnership, a partnership for Federal income tax purposes. LTP Partnership acquires real property. Two years later, LTP Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. LTP Partnership allocates the contribution $5X to G and $95X to UTP Partnership. UTP Partnership allocates its $95X portion of the contribution $45X to E and $50X to F. G's relevant basis is $10X, E's relevant basis is $11X, and F's relevant basis is $21X.

(B) *Analysis for LTP Partnership.* The ultimate members of LTP Partnership are G, E, and F because they each receive a distributive share of the qualified conservation contribution and are not a partnership or S corporation. Because UTP Partnership is a partnership, it is not an ultimate member of LTP Partnership, even though it receives a distributive share of the qualified conservation contribution. The amount of LTP Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which is $105X ($105X = 2.5 × (G's $10X relevant basis + E's $11X relevant basis + F's $21X relevant basis)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and this paragraph (j)) with respect to LTP Partnership and G.

(C) *Analysis for UTP Partnership.* Because UTP Partnership receives an allocated portion, UTP Partnership must apply this paragraph (j) and paragraphs (k) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are E and F because they each receive a distributive share of UTP Partnership's allocated portion and are not partnerships or S corporations. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $95X, which exceeds 2.5 times the sum of E's and F's relevant bases, which is $80X ($80X = 2.5 × (E's $11X relevant basis + F's $21X relevant basis)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is a disallowed qualified conservation contribution with respect to UTP Partnership, E, and F. No partner of UTP Partnership may claim any deduction with respect to this contribution, even though F's $50X distributive share of the contribution does not exceed 2.5 times F's $21X relevant basis. This does not affect the determination that G's distributive share of the contribution is not a disallowed qualified conservation contribution.

(k) *Determination of relevant basis.* For purposes of this section, the term *relevant basis* means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as determined under paragraph (l) of this section) that is allocable (under the rules of paragraph (m) of this section) to the portion of the real property with respect to which the qualified conservation contribution is made.

(l) *Determination of modified basis*—(1) *In general.* In the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in paragraph (l)(2) of this section. In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis is determined by such S corporation in the manner described in paragraph (l)(3) of this section.

(2) *Partners in partnerships*—(i) *Computation.* For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(2)(ii) through (v) of this section. However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner, with adjustments as determined under paragraphs (l)(2)(ii) through (v) of this section. The adjustments under paragraphs (l)(2)(ii) through (v) of this section must be made in the order in which they are listed.

(ii) *Step 1.* First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(2)(i) of this section and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

(iii) *Step 2.* Second, the amount determined under paragraph (l)(2)(ii) of this section must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. In making this determination, the partnership must apply the rules of § 1.706–4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of

day at which the qualified conservation contribution is made. The partnership cannot apply any convention in § 1.706–4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. This hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. This paragraph (l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares of partnership items of income, gain, loss, deduction, and credit for the taxable year in which the qualified conservation contribution is made or otherwise. *See* § 1.706–4 for applicable rules for the determination of a partner's distributive share when a partner's interest varies during a partnership taxable year.

(iv) *Step 3.* Third, the amount determined under paragraph (l)(2)(iii) of this section must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

(v) *Step 4.* Fourth, the amount determined under paragraph (l)(2)(iv) of this section must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount is such ultimate member's modified basis. Thus, an ultimate member's modified basis may be less than zero.

(3) *S corporation shareholder*—(i) *Computation.* For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. Modified basis does not include the ultimate member's adjusted basis of any indebtedness of the S corporation to the ultimate member. The adjustments under paragraphs (l)(3)(ii) and (iii) of this section must be made in the order in which they are listed.

(ii) *Step 1.* First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(3)(i) of this section, and then reflect an increase for the extent to which the ultimate member's adjusted basis reflects a reduction as a result of the qualified conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution does not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution.

(iii) *Step 2.* Second, the amount determined under paragraph (l)(3)(ii) of this section must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount is such ultimate member's modified basis.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (l). For the three examples in this paragraph (l)(4), assume that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts.* AB Partnership is a calendar-year partnership for Federal income tax purposes whose partners are A and B, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. Several years ago, B contributed property to AB Partnership subject to a § 1.752–1 liability. At the beginning of AB Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), A's adjusted basis in its interest in AB Partnership is $19X, and B's adjusted basis in its interest in AB Partnership is $17X. At 10:01 a.m. on August 29, 2024, AB Partnership makes a qualified conservation contribution. On August 29, 2024, the amount of the § 1.752–1 liability is $10X and is allocated under the rules of section 752 to A. During 2024, there were no variations in any partner's interests in AB Partnership within the meaning of section 706. During 2024, AB Partnership earned $8X of ordinary income and sustained ($4X) of capital loss in the ordinary course of its business, both of which are allocated equally to A and B. Within 2024, AB Partnership earned $6X of ordinary income, and sustained ($4X) of capital loss between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and AB Partnership earned $2X of ordinary income, and sustained $0X of capital loss between 10:01 a.m. on August 29, 2024, and the end of the day on December 31, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of § 1.706–4(e)(2). In April 2024, AB Partnership distributed $1X cash to A. In November 2024, B contributed $2X cash to AB Partnership.

(B) *Analysis.* The ultimate members of AB Partnership are A and B because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine A's and B's modified bases, AB Partnership must start with A's and B's adjusted bases in the AB Partnership as of the beginning of the first day of the taxable year of AB Partnership and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. Accordingly, the computation of A's beginning modified basis begins with $19X, and the computation of B's modified basis begins with $17X. First, those amounts must be increased by any contributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Because there were none, after this step, the computation of A's modified basis remains at $19X and the computation of B's modified basis remains at $17X. Then these amounts must be adjusted as provided in section 705 by A's and B's hypothetical distributive share of AB Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computations of A's and B's modified bases will each reflect an increase for their hypothetical $3X distributive share of the $6X ordinary income that AB Partnership earned between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and a decrease for their hypothetical ($2X) distributive share of the ($4X) capital loss that AB Partnership incurred between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Therefore, after this step, the computation of A's modified basis

reflects an increase from $19X to $20X, and the computation of B's modified basis reflects an increase from $17X to $18X. Next, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computation of A's modified basis reflects a reduction from $20X to $19X. B did not receive any distribution, so the computation of B's modified basis remains at $18X. Finally, the full amount of A's and B's shares of § 1.752–1 liabilities must be subtracted. Thus, the computation of A's modified basis reflects a reduction from $19X to $9X, which is A's modified basis. B's modified basis is $18X.

(ii) *Example 2*—(A) *Facts.* CD Partnership, a partnership for Federal income tax purposes, is a calendar-year partnership using the calendar day convention under § 1.706–4 whose partners on January 1, 2024, are C and D, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. On March 15, 2024, C sells its interest to E, a C corporation. At 1:15 p.m. on September 15, 2024, CD Partnership makes a qualified conservation contribution. On September 21, 2024, D sells its interest to F, an individual. During 2024, CD Partnership earned $8X of ordinary income and sustained ($14X) of ordinary loss. Within 2024, CD Partnership earned all $8X of ordinary income in November and December, and sustained all ($14X) of ordinary loss in April through August. In May 2024, D contributed $6X cash to CD Partnership, and E contributed property with a fair market value of $6X and basis of $3X. D and E are equal partners during the period in which they are both partners. CD Partnership made no distributions during 2024. CD Partnership had no § 1.752–1 liabilities during 2024. In accordance with § 1.706–4(e)(2)(ix), CD Partnership treats its qualified conservation contribution as an extraordinary item allocable only to D and E, its partners at 1:15 p.m. on September 15, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of § 1.706–4(e)(2). CD Partnership uses the proration method under § 1.706–4 to allocate its items among C, D, E, and F. Under the proration method, CD Partnership allocates each C, D, E, and F a distributive share of a portion of both the $8X ordinary income and the ($14X) ordinary loss. D's adjusted basis in its interest in CD Partnership at the beginning of CD Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), is $8X. E's adjusted basis in its interest in CD Partnership immediately after E acquires C's interest in CD Partnership is $6X.

(B) *Analysis.* The ultimate members of CD Partnership are D and E because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine D's and E's modified bases, CD Partnership must start with D's and E's adjusted bases in CD Partnership as of the beginning of the day on January 1, 2024, and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. However, because E was not a partner as of the beginning of the day on January 1, 2024, CD Partnership must start with E's adjusted basis immediately after E's purchase of C's interest in CD Partnership. Accordingly, the computation of D's modified basis begins with $8X, and the computation of E's modified basis begins with $6X. Then, these amounts must be increased by any contributions made by D or E, respectively, to CD Partnership between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Therefore, the computation of D's modified basis reflects an increase from $8X to $14X (for D's $6X contribution of cash to CD Partnership in May 2024), and the computation of E's modified basis reflects an increase from $6X to $9X (for E's contribution of property to CD Partnership with a basis of $3X in May 2024). Next, these amounts must be adjusted as provided in section 705 by D's and E's hypothetical distributive share of CD Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. CD Partnership must perform the analysis using an interim closing method to a hypothetical variation at 1:14 p.m. on September 15, 2024, immediately prior to the qualified conservation contribution. The computation of D's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the beginning of the day on January 1, 2024, through 1:14 p.m. on September 15, 2024. The computation of E's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the end of the day on March 15, 2024, through 1:14 p.m. on September 15, 2024. For purposes of this paragraph (l)(4)(ii)(B) (*Example 2*), it does not matter that CD Partnership actually used the proration method to allocate its 2024 income. Instead, under this hypothetical calculation of the distributive share, the computation of D's and E's modified bases will each reflect a reduction for their 50 percent share of the ($14X) ordinary loss. Because none of CD Partnership's $8X of ordinary income was earned between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024, neither D's nor E's modified basis will reflect an increase for any amount of that income. Thus, after this step, the computation of D's modified basis reflects a reduction from $14X to $7X, and the computation of E's modified basis reflects a reduction from $9X to $2X. Then, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Because there were none, after this step, the computation of D's modified basis remains at $7X, and the computation of E's modified basis remains at $2X. Finally, the full amount of D's and E's shares of § 1.752–1 liabilities must be subtracted. Because there were none, D's modified basis is $7X, and E's modified basis is $2X.

(iii) *Example 3*—(A) *Facts.* HI Inc. is a calendar-year S corporation whose shareholders on January 1, 2024, are H and I, each of whom owns 50 percent of the shares. On May 1, 2024, H sells all of its stock to J. In June 2024, HI Inc. contributes a conservation easement that is a qualified conservation contribution on 400 acres of real property. HI Inc.'s adjusted basis in the conservation easement is $12X (which is different from HI Inc.'s adjusted basis in the 400 acres and also may be different from the value of the conservation easement). On July 1, 2024, I sells all of its stock to K. Under § 1.1377–1, HI Inc. allocates its qualified conservation contribution ⅙ to H, ¼ to I, ⅓ to J, and ¼ to K. Pursuant to the second sentence of section 1367(a)(2)(B), as a result of the qualified conservation contribution, H's adjusted basis in its shares is reduced by $2X, I's adjusted basis in its shares is reduced by $3X, J's adjusted basis in its shares is reduced by $4X, and K's adjusted basis in its shares is reduced by $3X. At the end of HI Inc.'s 2024 taxable year (the end of the day on December 31, 2024), J's adjusted basis in its shares is $15X and K's adjusted basis in its shares is $11X. Immediately prior to H's sale to J, H's adjusted basis in its shares was $8X. Immediately prior to I's sale to K, I's adjusted basis in its shares was $7X. Whether H, I, J, or K have adjusted basis in indebtedness of HI Inc., has no effect on the computation of their modified bases. H is an estate of a deceased

shareholder, and I, J, and K are individuals that are not nonresident aliens.

(B) *Analysis.* The ultimate members of HI Inc. are H, I, J, and K, because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. To determine H's, I's, J's, and K's modified bases, HI Inc. must begin with each shareholder's adjusted basis in its shares as of the end of the day on December 31, 2024 (the end of the S corporation's taxable year in which it made the qualified conservation contribution). However, because H and I were not shareholders as of the end of the day on December 31, 2024, HI Inc. must begin with H's adjusted basis immediately before H's sale to J, and I's adjusted basis immediately before I's sale to K. Accordingly, the computation of H's modified basis begins with $8X, the computation of I's modified basis begins with $7X, the computation of J's modified basis begins with $15X, and the computation of K's modified basis begins with $11K. Next, HI Inc. must increase these amounts by the extent the adjusted bases were reduced as a result of the qualified conservation contribution. Accordingly, the computation of H's modified basis reflects an increase from $8X to $10X, the computation of I's modified basis reflects an increase from $7X to $10X, the computation of J's modified basis reflects an increase from $15X to $19X, and the computation of K's modified basis reflects an increase from $11X to $14X. Finally, HI Inc. must multiply each of these amounts by the number of days during 2024 in which each ultimate member was a shareholder, and divide by 366 (the total number of days in HI Inc.'s 2024 taxable year). H was a shareholder for 122 days. Thus, H's modified basis is $3.33X ($10X × 122/366). I was a shareholder for 183 days. Thus, I's modified basis is $5X ($10X × 183/366). J was a shareholder for 244 days. Thus, J's modified basis is $12.67X ($19X × 244/366). K was a shareholder for 183 days. Thus, K's is $7X ($14X × 183/366).

(m) *Allocation of modified basis*—(1) *In general.* An allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made must be made in accordance with this paragraph (m). Rules for allocating an ultimate member's modified basis in a contributing partnership are provided in paragraph (m)(2) of this section. Rules for allocating an ultimate member's modified basis in a contributing S corporation are provided in paragraph (m)(3) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier partnership are provided in paragraph (m)(4) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier S corporation are provided in paragraph (m)(5) of this section. Records must be kept in accordance with paragraph (m)(6) of this section.

(2) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing partnership*—(i) *Narrative rule.* This paragraph (m)(2) applies in the case of an ultimate member holding a direct interest in a contributing partnership and provides that a contributing partnership must determine each such ultimate member's relevant basis as provided in this paragraph (m)(2). Relevant basis equals each ultimate member's modified basis as determined under paragraph (l)(2) of this section multiplied by a fraction—

(A) The numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; and

(B) The denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under paragraph (m)(2)(iii) of this section.

(ii) *Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.* For purposes of this paragraph (m)(2), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made (determined as of the time of day of the contribution) multiplied by a fraction—

(A) The numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and

(B) The denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

(iii) *Ultimate member's portion of the adjusted basis in all the contributing partnership's properties.* For purposes of this paragraph (m)(2), an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of:

(A) The ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; plus

(B) The ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made. To determine the ultimate member's portion of the adjusted basis in all the contributing partnership's properties, the contributing partnership must apportion among its partners in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

(iv) *Formulaic rule.* The rule of this paragraph (m)(2) is also expressed in the following formula:

Figure 1 to Paragraph (m)(2)(iv)

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(3) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation*—(i) *Narrative rule.* This paragraph (m)(3) applies in the case of an ultimate member holding a direct interest in a contributing S corporation and provides that a contributing S corporation must determine each such ultimate member's relevant basis as provided in this paragraph (m)(3). Relevant basis equals each ultimate member's modified basis as determined under paragraph (l)(3) of this section multiplied by a fraction—

(A) The numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and

(B) The denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(ii) *Formulaic rule.* The rule of this paragraph (m)(3) is also expressed in the following formula:

Figure 2 to Paragraph (m)(3)(ii)

$$R = M \times (E \div F)$$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(4) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier partnership*—(i) *In general.* This paragraph (m)(4) applies in the case of an ultimate member holding a direct interest in an upper-tier partnership. Each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(4) describes a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. In a situation involving more tiers, each partnership must apply the rules and principles of this paragraph (m)(4) iteratively to determine relevant basis.

(ii) *Upper-tier partnership*—(A) *Narrative rule.* The upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(4)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(4)(ii)(B) is similar to the formula provided in paragraph (m)(2)(iv) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(4)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in paragraph (m)(4)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(4)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(B) *Formulaic rule.* The rule of this paragraph (m)(4)(ii) is also expressed in the following formula:

Figure 3 to Paragraph (m)(4)(ii)(B)

$$G = M \times (U \div (J + U))$$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.
M = Modified basis as determined under paragraph (l) of this section.
J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.
U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.
H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.
B = Ultimate member's distributive share of the qualified conservation contribution.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(iii) *Contributing partnership*—(A) *Narrative rule.* After completion of the computations under paragraph (m)(4)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item G (see paragraph (m)(4)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(4)(iii)(B) of this section.

(B) *Formulaic rule.* The rule of this paragraph (m)(4)(iii) is also expressed in the following formula:

Figure 5 to Paragraph (m)(4)(iii)(B)

$$R = G \times (V \div (L + V))$$

Where:

R = Relevant basis.
G = Amount determined with respect to item G as described under paragraph (m)(4)(ii)(B) of this section.
L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (K ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(5) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation*—(i) *In general.* This paragraph (m)(5) applies in the case of an ultimate member holding a direct interest in an upper-tier S corporation. Each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(5) describes a situation in which there are two tiers—a contributing partnership and an upper-tier S corporation. In a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of this paragraph (m) iteratively to determine relevant basis.

(ii) *Upper-tier S corporation*—(A) *Narrative rule.* The upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(3) of this section, and the formula provided in paragraph (m)(5)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(5)(ii)(B) is similar to the formula provided in paragraph (m)(3)(ii) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(5)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in paragraph (m)(5)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(5)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(B) *Formulaic rule.* The rule of this paragraph (m)(5)(ii) is also expressed in the following formula:

Figure 6 to Paragraph (m)(5)(ii)(B)
$N = M \times (P \div Q)$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.
M = Modified basis as determined under paragraph (l) of this section.
P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.
Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's adjusted basis in its interest in the contributing partnership).

(iii) *Contributing partnership*—(A) *Narrative rule.* After completion of the computations under paragraph (m)(5)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item N (see paragraph (m)(5)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(5)(iii)(B) of this section.

(B) *Formulaic rule.* The rule of this paragraph (m)(5)(iii) is also expressed in the following formula:

Figure 7 to Paragraph (m)(5)(iii)(B)
$R = N \times (W \div (S + W))$

Where:

R = Relevant basis.
N = Amount determined with respect to item N as described under paragraph (m)(5)(ii)(B) of this section.
S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.
W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (Y ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
Y = Upper-tier S corporation's allocated portion of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(6) *Recordkeeping requirements.* Contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. *See* § 1.6001–1. These statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in paragraph (n)(2) or (3) of this section.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (m). For the three examples in this paragraph (m)(7), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code and the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts.* YZ Partnership is a partnership for Federal income tax purposes whose partners are individuals Y and Z. YZ Partnership owns 100 acres of real property with an adjusted basis of $10X. YZ Partnership makes a qualified conservation contribution on 60 acres of the property. YZ Partnership claims a contribution of $18X, which it allocates $12X to Y and $6X to Z. YZ Partnership's adjusted basis in the 60 acres is $6X, and its adjusted basis in all of its other properties (including its $4X basis in the 40 acres on which a qualified conservation contribution was not made) is $18X. Y's modified basis is

$8X. Y's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Y's interest in YZ Partnership is $4X. Z's modified basis is $12X. Z's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Z's interest in YZ Partnership is $14X.

(B) *General analysis.* Y and Z are the ultimate members of YZ Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Figure 8 to Paragraph (m)(7)(i)(B)

$R = M \times (T \div (D + T))$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(C) *Y's relevant basis.* With respect to Y:

(*1*) M = $8X.

(*2*) D = $4X.

(*3*) A = $6X.

(*4*) B = $12X.

(*5*) C = $18X.

(*6*) Thus, T is $4X = $6X × ($12X ÷ $18X).

(*7*) Accordingly, Y's relevant basis is $4X = $8X × ($4X ÷ ($4X + $4X)).

(D) *Z's relevant basis.* With respect to Z:

(*1*) M = $12X.

(*2*) D = $14X.

(*3*) A = $6X.

(*4*) B = $6X.

(*5*) C = $18X.

(*6*) Thus, T is $2X = $6X × ($6X ÷ $18X).

(*7*) Accordingly, Z's relevant basis is $1.5X = $12X × ($2X ÷ ($14X + $2X)).

(E) *Sum of relevant bases.* The amount of YZ Partnership's claimed contribution is $18X, which exceeds 2.5 times the sum of Y's and Z's relevant bases, which is $13.75X ($13.75X = 2.5 x (Y's relevant basis of $4X + Z's relevant basis of $1.5X)). Accordingly, YZ Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any deduction with respect to this contribution.

(ii) *Example 2*—(A) *Facts.* CD Inc. is an S corporation with shareholders C and D, each of whom is an individual that is not a nonresident alien. C owns one third of the outstanding stock in CD Inc., and D owns the remaining two thirds. CD Inc. owns 100 acres of real property with an adjusted basis of $10X. CD Inc. makes a qualified conservation contribution on 60 acres of the property. CD Inc. claims a contribution of $9X, which it allocates $3X to C and $6X to D. CD Inc.'s adjusted basis in the 60 acres is $6X, and its adjusted basis in all its properties (including its $6X basis in the 60 acres) is $24X. C's modified basis in CD Inc. is $8X. D's modified basis in CD Inc. is $12X.

(B) *General analysis.* C and D are the ultimate members of CD Inc. because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Figure 9 to Paragraph (m)(7)(ii)(B)

$R = M \times (E \div F)$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(C) *C's relevant basis.* With respect to C:

(*1*) M = $8X.

(*2*) E = $2X (⅓ of $6X).

(*3*) F = $8X (⅓ of $24X).

(*4*) Thus, C's relevant basis is $2X = $8X × ($2X ÷ $8X).

(D) *D's relevant basis.* With respect to D:

(*1*) M = $12X.

(*2*) E = $4X (⅔ of $6X).

(*3*) F = $16X (⅔ of $24X).

(*4*) Thus, D's relevant basis is $3X = $12X × ($4X ÷ $16X).

(E) *Sum of relevant bases.* The amount of CD Inc.'s claimed qualified conservation contribution is $9X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is $12.50 ($12.50X = 2.5 × (C's relevant basis of $2X + D's relevant basis of $3X)). Accordingly, CD Inc.'s contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(iii) *Example 3*—(A) *Facts.* LTP Partnership is a partnership for Federal income tax purposes whose partners are individual E and UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership's partners are C corporations P and Q. LTP Partnership owns 300 acres of real property. LTP Partnership makes a qualified conservation contribution on all 300 acres. LTP Partnership claims a qualified conservation contribution of $22X, which it allocates $2X to E and $20X to UTP Partnership. UTP Partnership allocates its $20X share of the qualified conservation contribution $6X to P and $14X to Q. LTP Partnership's basis in the 300 acres is $18X, and its adjusted basis in all of its other properties is $12X. E's modified basis in LTP Partnership is $4X. E's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined in accordance with E's interest in LTP Partnership is $4.36X. UTP Partnership's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined in accordance with UTP Partnership's interest in LTP Partnership is $7.64X. UTP Partnership's adjusted basis in its interest in LTP Partnership is $19, and its adjusted basis in all other properties is $6X. P's modified basis in UTP Partnership is $12X. P's portion of UTP Partnership's adjusted basis in all partnership property (other than the interest in LTP Partnership) as determined in accordance with P's interest in UTP Partnership is $3.6X. Q's modified basis in UTP Partnership is $8X. Q's portion of UTP Partnership's adjusted basis of all partnership property (other than the interest in LTP Partnership) as determined in accordance with Q's interest in UTP Partnership is $2.4X.

(B) *Analysis: partner E.* (*1*) The ultimate members of LTP Partnership are E, P, and Q because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Because E holds a direct interest in LTP Partnership, E's relevant basis must be determined in accordance with the following formula:

Figure 10 to Paragraph (m)(7)(iii)(B)(*1*)
R = M × (T ÷ (D + T))

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (B ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(*2*) With respect to E:
(*i*) M = $4X.
(*ii*) D = $4.36X.
(*iii*) A = $18X.
(*iv*) B = $2X.
(*v*) C = $22X.
(*vi*) Thus, T is $1.64X = $18X × ($2X ÷ $22X).
(*vii*) Accordingly, E's relevant basis is $1.09X = $4X × ($1.64X ÷ ($4.36X + $1.64X)).

(C) *Analysis: General rule for UTP Partnership.* Because P and Q hold interests in an upper-tier partnership, UTP Partnership must first determine the portions of P's and Q's modified bases that are allocable to UTP Partnership's interest in LTP Partnership. This is to be done according to the following formula:

Figure 11 to Paragraph (m)(7)(iii)(C)
G = M × (U ÷ (J + U))

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.
M = Modified basis as determined under paragraph (l) of this section.
J = Ultimate member's portion of adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership).
U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: H × (B ÷ K).
H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.
B = Ultimate member's distributive share of the qualified conservation contribution.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(D) *Analysis: Step 1 for P.* With respect to P:
(*1*.
(E) *Analysis: Step 1 for Q.* With respect to Q:
(*1*) M = $8X.
(*2*) J = $2.4X.
(*3*) H = $19X.
(*4*) B = $14X.
(*5*) K = $20X.
(*6*) Thus, U is $13.30X = $19X × ($14X ÷ $20X).
(*7*) Accordingly, the portion of Q's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is $6.78X = $8X × ($13.30X ÷ ($2.40X + $13.30X)).

(F) *Analysis: General rule for LTP Partnership.* Next, LTP Partnership must determine P's and Q's relevant bases, which equals the portions of the amounts determined under paragraphs (m)(7)(iii)(D) and (E) of this section (*Example 3*) that are allocable to the portion of the real property with respect to which the qualified conservation contribution was made. This must be done according to the following formula:

Figure 12 to Paragraph (m)(7)(iii)(F)
R = G × (V ÷ (L + V))

Where:

R = Relevant basis.
G = Amount determined with respect to item G under paragraph (m)(4)(ii)(B) of this section.
L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).
V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (K ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(G) *Analysis: Step 2 for P.* With respect to P:
(*1*) G = $7.35X.
(*2*) L = $7.64X.
(*3*) A = $18X.
(*4*) K = $20X.
(*5*) C = $22X.
(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).
(*7*) Accordingly, P's relevant basis is $5.01X = $7.35X × ($16.36X ÷ ($7.64X + $16.36X)).

(H) *Analysis: Step 2 for Q.* With respect to Q:
(*1*) G = $6.78X.
(*2*) L = $7.64X.
(*3*) A = $18X.
(*4*) K = $20X.
(*5*) C = $22X.
(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).
(*7*) Accordingly, Q's relevant basis is $4.62X = $6.78X × ($16.36X ÷ ($7.64X + $16.36X)).

(I) *Analysis: Computation of 2.5 times sum of relevant bases.* The ultimate members of LTP Partnership are E, P, and Q. The amount of LTP Partnership's qualified conservation contribution is $22X. This does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which totals $26.80 ($26.80 = 2.5 × (E's relevant basis of 1.09X + P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section). Because UTP Partnership receives an allocated portion, it must apply paragraphs (j) through (l) of this section and this paragraph (m) to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are P and Q. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $20X. This does not exceed 2.5 times the sum of P's and Q's relevant bases, which is $24.08X ($24.08X = 2.5 × (P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(n) *Exceptions*—(1) *In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution that satisfies one or more of the three exceptions in this paragraph (n). However, as provided in paragraph (j)(5) of this section, there is no presumption that such a contribution is compliant with section 170, any other section of the Code, or the regulations in this part or any other guidance. Being described in this paragraph (n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason,

including failure to satisfy other requirements of section 170 and overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

(2) *Exception for contributions outside three-year holding period*—(i) *In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation made at least three years after the latest of—

(A) The last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made;

(B) The last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation; and

(C) If the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations—

(*1*) The last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the contributing partnership or any other upper-tier partnership; and

(*2*) The last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest in such upper-tier partnership or upper-tier S corporation.

(ii) *Acquisition of partnership interest.* For purposes of this paragraph (n)(2), an acquisition of any interest in a partnership is any *variation* within the meaning of that term in § 1.706–4(a)(1); however, a variation does not include a change in allocations that satisfies the requirements of § 1.706–4(b)(1).

(iii) *Acquisition of interest in an S corporation.* For purposes of this paragraph (n)(2), an acquisition of any interest in an S corporation is any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition does not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder.

(iv) *Exception is determined at the level of the contributing partnership or contributing S corporation.* If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(2), then this paragraph (n)(2) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(2) if the person had been the one to make the qualified conservation contribution.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (n)(2). For the two examples in this paragraph (n)(2)(v), assume that the exceptions in paragraphs (n)(3) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts.* ABC Partnership is a partnership for Federal income tax purposes. Since 2015, ABC Partnership's partners have been A, an individual, and BC Inc., an S corporation. Since 2015, BC Inc.'s shareholders have been B and C, each of whom is an individual that is not a nonresident alien. On December 27, 2024, ABC partnership acquires real property. On August 29, 2025, BC Inc. redeems half of B's shares in BC Inc. On December 28, 2027, ABC Partnership makes a qualified conservation contribution.

(*2*) *Analysis.* Pursuant to paragraph (n)(2)(iii) of this section, BC Inc.'s redemption of some of B's shares is treated as an acquisition of an interest in BC Inc. for purposes of this paragraph (n)(2). Accordingly, ABC Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in ABC Partnership, the contributing partnership. Therefore, ABC Partnership's contribution fails to satisfy the requirements of this paragraph (n)(2) and must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

(B) *Example 2*—(*1*) *Facts.* LTP partnership is a partnership for Federal income tax purposes. Since 2017, LTP Partnership's partners have been UTP Partnership, a partnership for Federal income tax purposes, and FG Inc., an S corporation. Since 2018, UTP Partnership's partners have been individuals D and E, and there has been no variation in their ownership. Since 2019, FG Inc.'s shareholders have been F and G, each of whom is an individual that is not a nonresident alien. On March 15, 2024, LTP Partnership acquires real property. On September 15, 2026, D dies and D's interest in UTP Partnership passes to D's estate. On March 18, 2027, LTP Partnership makes a qualified conservation contribution. LTP Partnership allocates all of the qualified conservation contribution to FG Inc.

(*2*) *Analysis.* Pursuant to paragraph (n)(2)(ii) of this section, the transfer of D's interest in UTP Partnership to D's estate is treated as an acquisition of an interest in UTP Partnership for purposes of paragraph (n)(2) of this section. Accordingly, LTP Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in LTP Partnership, the contributing partnership. Therefore, LTP Partnership's contribution fails to satisfy the requirement of this paragraph (n)(2). Pursuant to paragraph (n)(2)(iv) of this section, FG Inc. cannot avail itself of this paragraph (n)(2) with respect to its allocated portion of LTP Partnership's contribution. Accordingly, FG Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution.

(3) *Exception for family partnerships and S corporations*—(i) *General rule.* Paragraph (j) of this section does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual, and the contributing partnership or contributing S corporation meets the requirements of this paragraph (n)(3).

(ii) *Ninety percent of the interests*—(A) *Family partnerships.* In the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

(B) *Family S corporations.* In the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

(iii) *Members of the family.* For purposes of this paragraph (n)(3), the

term *members of the family* means, with respect to any individual—

(A) The spouse of such individual; and

(B) Any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code.

(iv) *Anti-abuse rules*—(A) *Holding period.* This paragraph (n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. The members of the family during that year need not be the same members of the family that own an interest at the time of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of that individual's family.

(B) *Allocations.* This paragraph (n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the family who own at least 90 percent of the interests in the contributing partnership or contributing S corporation under paragraph (n)(3)(ii) of this section.

(v) *Exception is determined at the level of the contributing partnership or contributing S corporation.* If the contributing partnership or contributing S corporation satisfies the requirements of this paragraph (n)(3), then any upper-tier partnership or upper-tier S corporation need not apply paragraphs (j) through (m) of this section and this paragraph (n) to its allocated portions of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(3), then the exception in this paragraph (n)(3) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(3) if the person had been the one to make the contribution.

(vi) *Examples.* The following examples illustrate the provisions of this paragraph (n)(3). For the two examples in this paragraph (n)(3)(vi), assume that the exceptions in paragraphs (n)(2) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts.* Individual A and A's sibling B acquire real property on July 5, 2024. On September 14, 2024, B transfers its interest in the real property to B's child C. On February 21, 2025, A and C transfer their interests in the real property to AC Partnership, a partnership for Federal income tax purposes whose only partners are A and C. On March 18, 2025, A's stepfather D becomes a partner in AC Partnership in exchange for a capital contribution. On September 15, 2025, AC Partnership makes a qualified conservation contribution on the real property. AC Partnership never had any partners other than A, C, and D.

(*2*) *Analysis.* B, C, and D qualify as members of the family with respect to A. Accordingly, as of the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits of AC Partnership were owned by an individual and members of that individual's family. In addition, at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly and indirectly, by A and members of A's family for at least one year prior to the date of the contribution. Moreover, at least 90 percent of the contribution is allocated to A and members of A's family. Accordingly, the requirements of this paragraph (n)(3) are satisfied, and the Disallowance Rule in section 170(h)(7)(A) and paragraph (j) of this section does not apply.

(B) *Example 2*—(*1*) *Facts.* LTP Partnership is a partnership for Federal income tax purposes whose partners are EF Inc., an S corporation, and UTP Partnership, a partnership for Federal income tax purposes. EF Inc. and UTP Partnership each hold a 50 percent interest in the profits and capital of LTP Partnership. The shareholders of EF Inc. are E and E's sibling F. The partners of UTP Partnership are G and G's child H. E and F are not related to G and H. LTP Partnership has held real property since 2019. On July 5, 2024, LTP Partnership distributes half of the acres of its real property to EF Inc., and the remaining acres to UTP Partnership. On October 21, 2024, EF Inc., makes a qualified conservation contribution on the real property it received from LTP Partnership.

(*2*) *Analysis.* F qualifies as a member of the family with respect to E. Accordingly, as of the time of EF Inc.'s qualified conservation contribution, EF Inc. was owned at least 90 percent by an individual and members of that individual's family. In addition, at least 90 percent of EF Inc's qualified conservation contribution is allocated to E and members of E's family. However, E and members of E's family failed to own at least 90 percent of the property with respect to which the qualified conservation contribution was made for at least one year prior to the date of the contribution. In particular, G and H (who are not members of the family with respect to E or F) indirectly owned a 50 percent interest in the property until July 5, 2024. Accordingly, the requirements of this paragraph (n)(3) are not satisfied. EF Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

(4) *Exception for contributions to preserve certified historic structures.* Paragraph (j) of this section does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). *See* § 1.170A–16(f)(6) for special reporting requirements for a contribution that meets the exception in this paragraph (n)(4).

(o) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(4)(ii), (i), and (o)(2) of this section, paragraphs (a) through (i) of this section apply only to contributions made on or after December 18, 1980. Paragraphs (j) through (n) of this section apply to contributions made after December 29, 2022.

(2) *Exception.* Paragraph (h)(4)(ii) of this section applies on and after June 1, 2023.

■ **Par. 3.** Section 1.170A–16 is amended by:

■ 1. In paragraph (c)(3)(iv)(F), adding the word ''and'' at the end of the paragraph;

■ 2. In paragraph (c)(3)(iv)(G), removing the language ''and'' at the end of the paragraph;

■ 3. Redesignating paragraph (c)(3)(v) as paragraph (c)(3)(vi) and adding new paragraph (c)(3)(v);

■ 4. In paragraph (d)(3)(vii), removing the language ''and'' at the end of the paragraph;

■ 5. Redesignating paragraph (d)(3)(viii) as paragraph (d)(3)(x) and adding new paragraph (d)(3)(viii);

■ 6. Adding paragraph (d)(3)(ix);

■ 7. Revising paragraph (f)(4);

■ 8. Adding paragraph (f)(6);

■ 9. Revising paragraph (g).

The additions and revisions read as follows:

§ 1.170A–16 Substantiation and reporting requirements for noncash charitable contributions.

* * * * *

(c) * * *

(3) * * *

(v) Where a number can be inserted into any box on Form 8283 (Section A), the number inserted in the box on Form 8283 (Section A). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (c)(3)(v) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section A) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section A) with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request.* The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section A) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(d) * * *

(3) * * *

(viii) In the case of a partnership or S corporation that makes a qualified conservation contribution, the sum of each ultimate member's relevant bases, computed in accordance with § 1.170A–14(j) through (m), but only:

(A) For contributions described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations); and

(B) For all contributions not described in section 170(h)(7)(E) and § 1.170A–14(n)(4), provided they are not described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations);

(ix) Where a number can be inserted into any box on Form 8283 (Section B), the number inserted in the box on Form 8283 (Section B). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (d)(3)(ix) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section B) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section B) with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request.* The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section B) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(f) * * *

(4) *Partners and S corporation shareholders*—(i) *Form 8283 (Section A or Section B) must be provided to partners and S corporation shareholders.* If the donor is a partnership or an S corporation, the donor must provide a copy of its completed Form 8283 (Section A or Section B) to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283 (Section A or Section B). Similarly, a recipient partner that is a partnership or S corporation must provide a copy of the donor's completed Form 8283 (Section A or Section B) to each of its partners or shareholders who receives an allocation of the charitable contribution, and so on through any additional tiers.

(ii) *Partners and S corporation shareholders must attach Forms 8283 (Section A or Section B) to return.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which paragraph (c), (d), or (e) of this section applies must attach to the return on which the contribution is claimed a copy of each Form 8283 that must be provided to them under paragraph (f)(4)(i) or (iii) of this section.

(iii) *Partners and S corporation shareholders must file separate Forms 8283 and provide copies to any partners*—(A) *In general.* Subject to paragraph (f)(4)(iii)(B) of this section, every partner of a partnership (including a partner that is itself a partnership or S corporation) or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for which paragraph (c), (d), or (e) of this section applies must complete a separate Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In the case of a partner that is itself a partnership or S corporation, that partnership or S corporation must provide a copy of its completed separate Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed, in addition to the copy of each Form 8283 that the partner or shareholder is required to attach pursuant to paragraph (f)(4)(ii) of this section.

(B) *Conservation contributions.* The terms defined in § 1.170A–14(j)(3) apply for purposes of this paragraph (f)(4)(iii)(B). In the case of a qualified conservation contribution that is made by a partnership or S corporation, an ultimate member's separate Form 8283 must include their own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases (as computed in accordance with § 1.170A–14(j) through (m)). This paragraph (f)(4)(iii)(B) does not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case this paragraph (f)(4)(iii)(B) does apply.

* * * * *

(6) *Conservation contributions by pass-through entities preserving certified historic structures*—(i) *In general.* The terms defined in § 1.170A–14(j)(3) apply for purposes of this paragraph (f)(6). For any contribution described in paragraph (f)(6)(ii) of this section, pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless the contributing partnership, the contributing S corporation, the upper-tier partnership, or the upper-tier S corporation, respectively—

(A) Includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion, as described in paragraph (f)(6)(iii) of this section; and

(B) Provides such information about the contribution as the Secretary may require in guidance, forms, or instructions.

(ii) *Contributions to which this paragraph (f)(6) applies.* This paragraph (f)(6) applies to any qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14):

(A) The conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C));

(B) That is either made by a contributing partnership or contributing S corporation (as defined in § 1.170A–14(j)(3)(iv)), or that is an allocated portion (as defined in § 1.170A–14(j)(3)(i)) of an upper-tier partnership (as defined in § 1.170A–14(j)(3)(xi)) or upper-tier S corporation (as defined in § 1.170A–14(j)(3)(xii)); and

(C) The amount of such contribution (as defined in § 1.170A–14(j)(3)(ii)) or such allocated portion (as defined in § 1.170A–14(j)(3)(i)) exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in § 1.170A–14(j) through (m)).

(iii) *Required information.* A partnership or S corporation satisfies the requirements of section 170(f)(19)(A) and paragraph (f)(6)(i) of this section by filing a completed Form 8283, including information about relevant basis, in accordance with section 170, the regulations under section 170, and the instructions to Form 8283.

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to contributions made after July 30, 2018.

(2) *Certain paragraphs.* Paragraphs (c)(3)(vi), (d)(3)(viii) and (x), and (f)(4) and (6) of this section apply to taxable years ending on or after November 20, 2023.

■ **Par. 4.** Section 1.706–0 is amended by revising the entry for § 1.706–3 to read as follows:

§ 1.706–0 Table of contents.

* * * * *

§ 1.706–3 Items attributable to interest in lower-tier partnership.

(a) Conservation contributions.

(b) Applicability date.

* * * * *

■ **Par. 5.** Section 1.706–3 is revised to read as follows:

§ 1.706–3 *Items attributable to interest in lower-tier partnership.*

(a) *Conservation contributions.* For purposes of section 706(d)(3), in the case of a qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706–4.

(b) *Applicability date.* Paragraph (a) of this section applies to qualified conservation contributions made after December 29, 2022.

■ **Par. 6.** Section 1.706–4 is amended by:

■ 1. Redesignating paragraphs (e)(2)(ix) through (xi) as paragraphs (e)(2)(x) through (xii), respectively, and adding new paragraph (e)(2)(ix);

■ 2. Adding the word ''and'' at the end of newly redesignated paragraph (e)(2)(xi); and

■ 3. Revising paragraphs (e)(3) and (g).

The addition and revisions read as follows:

§ 1.706–4 Determination of distributive share when a partner's interest varies.

* * * * *

(e) * * *

(2) * * *

(ix) Any qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii));

* * * * *

(3) *Small item exception.* A partnership may treat an item described in paragraph (e)(2) of this section (except for an item described in paragraph (e)(2)(ix) of this section) as other than an extraordinary item for purposes of this paragraph (e) if, for the partnership's taxable year the total of all items in the particular class of extraordinary items (as enumerated in paragraphs (e)(2)(i) through (xii) of this section, for example, all tort or similar liabilities, but in no event counting an extraordinary item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such extraordinary items as positive amounts.

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies for partnership taxable years that begin on or after August 3, 2015.

(2) *Paragraph (c)(3) of this section.* The rules of paragraph (c)(3) of this section apply for taxable years of partnerships other than existing publicly traded partnerships that begin on or after August 3, 2015. For purposes of this paragraph (g)(2), an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 14, 2009. For purposes of this paragraph (g)(2), the termination of a publicly traded partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits in a taxable year beginning on or before December 31, 2017, is disregarded in determining whether the publicly traded partnership is an existing publicly traded partnership.

(3) *Paragraph (e)(2)(ix) of this section.* Paragraph (e)(2)(ix) of this section applies to qualified conservation contributions made after December 29, 2022.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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